Brief of Argument for Appellee

Supreme Court of the United States.

Filed Nov. 5, 1898.

OCTOBER TERM, 1897.

No. 512.

W. VANCE, W. N. BAHR, J. M. SCOTT, Et al.,
APPELLANTS,

vs.

W. A. VANDERCOOK CO., APPELLEE.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES
FOR THE DISTRICT OF SOUTH CAROLINA.

BRIEF OF

J. F. H. BETAH,

Counsel for Appellee.

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J. P. K. BRYAN,

Counsel for Appellee.

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STATEMENT OF THE CASE.

This is a bill in Equity for injunction and relief brought by the W. A. Vandercook Company, of the State of California, against S. W. Vance and others claiming to act as officials and constables under the Act of the General Assembly of the State of South Carolina, generally known as the "State Liquor Dispensary, (folio 2 Record.)

The Complainant is the proprietor of certain well-known vineyards in the State of California known as the vineyards in the "San Gabriel, Santa Clara, Fresno, Sonoma and Napa Valleys," and are producers from grapes of such vineyards of its well-known pure wines and brandies and other liquors, particticularly of clarets, Rhine wine, Burgundies and champagnes.

The bill further alleges that in February and March, 1897, the complainants, in pursuance of certain orders of citizens and residents of Charleston, S. C. shipped from San Francisco, California, 26th March, 1897, by railroad to its agent in the city of Charleston, S. C., one carload of such wines, products of complainant's said vineyards containing seventy-three separate original packages, each marked "W. A. Vandercook, Los Angelos, California," for each of said purchasers and customers, and also marked with specific brand of wine (as by Schedule "A") of the value of twelve hundred dollars. (Fol. 3 Record.)

That these packages were wrongfully seized on arrival at the railroad depot by certain of defendants at Charleston, S. C., and were shipped to defendant, S. W. Vance, at Columbia, S. C., who claimed to act as State Commissioner under said State Liquor Dispensary Law of South Carolina and detained, after repeated demands, said wines and threatened to sell and convert the same. (Fol. 4 Record.)

That the defendant and other officials of the State of South Carolina unlawfully threatened to seize all the wines shipped

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by complainants into the State of South Carolina and deliver same to S. W. Vance, as State Commissioner, who threaten to convert and sell the same, to the iujury of complainants and destruction of their lawful business and inter-state trade and commerce in said wines with the citizens and residents of the State of South Carolina, secured to them by and under the Constitution and laws of the United States. (Fol. 5 Record.)

The complainants since 20 March, 1897, in pursuance of like orders from citizens and residents of the State of South Carolina, shipped from San Francisco, California, to its agent at Charleston, S. C., by railroad, one-half carload of wines, containing nineteen separate original packages of the value of three hundred dollars, all bearing like stamp (Exhibit C.) for its said customers, and same were seized by defendants under like claim on the —— day of April, 1897, on arrival at railroad depot at Charleston, S. C., as previously alleged. (Fol. 6 Record.)

The complainant is now about to ship fifty-eight like packages of its wines on like orders from citizens and residents of South Carolina, to the value of seven hundred dollars, and to ship also continually hereafter to its said customers, residents of the State of South Carolina, in due course of inter-state trade and commerce and supply of their continuous want of and demand for wines and products of your orator's vineyards, large shipments in original separate packages from time to time, exceeding the value of ten thousand dollars ($10,000. (Fol. 6 Record.)

The bill further alleged:

"And your orator further shews, that your orator intends "in the course of its said business, as aforesaid, further and in "addition to said shipments so ordered by its said customers "in advance, as aforesaid, to ship also from San Francisco, "California, to its agent in the State of South Carolina, and to "store and warehouse in the State of South Carolina, and to "sell in the State of South Carolina, in the original unbroken "packages as imported, as aforesaid, to the residents and "citizens of the State of South Carolina, its wines and other

" liquors, products of its vineyards, as aforesaid, for the lawful " use and consumption of the said residents and citizens of the " State of South Carolina in the due and lawful exercise of " your orator's right of importation of such wines, &c., pro- " ducts of its vineyards, into the State of South Carolina in " lawful intercourse, trade and commerce with the citizens and " residents of the State of South Carolina, under the Constitu- " tion and laws of the United States, all of which shipments, as " aforesaid, the defendant and other persons claiming to act as " State constables and officials threaten to seize, take and carry " away, detain, convert and sell to the manifest wrong, damage " and injury of your orator and its trade and business, as " aforesaid."

" And your orator further shows, that by and under the terms, principle. policy and operation of the said dispensary law of the State of South Carolina, as aforesaid, approved March 6, 1896, and amended March 5, 1897, all wines, beers, alcoholic, spirituous and other intoxicating liquors are subjects of lawful manufacture, barter, sale, export and import in the State of South Carolina, and have been, are being, and will continue to be lawfully used and consumed as a beverage by the citizens and residents of the State of South Carolina."

" And your orator further shows, that the wines and other liquors, products of your orator's vineyards, as aforesaid, are lawful subjects of inter-state and foreign trade and commerce."

" And your orator further shows, that the said dispensary law of the State of South Carolina, in so far as it authorizes any of the said acts of the said defendants, or in any way attempts to abridge your orator's right of importation of its said products of its vineyards into the State of South Carolina, and there sell, in original imported packages, the same, or in anywise hinders and prevents its intercourse, commerce and trade with the citizens and residents of the State of South Carolina in the products of its said vineyards, is in conflict with Art. 1, Secs. 8 and 9, of the Constitution of the United States, and is unconstitutional, null and void. (Fol. 6 and 7, Record.)"

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The bill further alleges repeated notices by complainant to defendant of the right and privilege of complainant under the Constitution of the United States and warnings as to their malicious trespasses, but notwithstanding same defendant continues and threatens to continue in said trespasses and seizures and breaking up such lawful interstate trade and intercourse of complainants with citizens and residents of South Carolina. (Fol. 8, Record.)

The bill further alleged accrued damages to extent of five thousand dollars, and threatened destruction of the business and trade of complainants to the damage upwards of five hundred dollars. (Fol. 8, Record.)

The bill also alleged that the protection of complainant involved a multiplicity of suits, the financial irresponsibility of all defendants, and irreparable injury to complainants by the threatened continuous invasion and violation of complainants' constitutional rights, privileges and immunities, and to the continuous unlawful restraint of the said trade, commerce and intercourse of your orator with the citizens and residents of the State of South Carolina, and to the continuous obstruction and destruction of the lawful business of your orator in the sale, as aforesaid, of such wines, &c., products of its vineyards, to the citizens and residents of the State of South Carolina, and the continuous unlawful restraint of the lawful use and consumption by the citizens and residents of the State of South Carolina of the products of the vineyards of your orator in the said State of California.

The bill prayed interlocutory and permanent injunction against said defendants in their unlawful destruction of the Inter-State trade and commerce of complainant in the products of its vineyards as set forth in the bill. (Fol. 11, Record.)

INTERLOCUTORY DECREE.

The defendants answered setting up the South Carolina Dispensary Law as their legal justification. (Fols. 23, 25, 28, 34, Record.)

Upon hearing on bill and answer the U. S. Circuit Court granted the interlocutory injunction and delivered an opinion on the same. (Fol. 45-58, Record.)

EVIDENCE.

The evidence of R. R. Turner on behalf of the complainants is full in sustaining the allegation of the bill as to orders of the citizens and residents of Charleston, S. C., for the wines of complainant's California vineyards, shipments from San Francisco, and seizure of same on arrival at Charleston, S. C., and the notices and repeated warnings to defendants, and their continued trespasses notwithstanding, and damages to complainants. (Fol. 83-91, Record,) and particularly he testified as follows:

"The plaintiff is a corporation created by and under the laws of the State of California and are proprietors and owners of a number of vineyards in the State of California, known as "San Gabriel," "Santa Clara," "Fresna," and "Napa" Valleys, and producers of wines and brandies from the grapes."

And also testified:

"Before, during and after these seizures intoxicating liquors *inter alia*, whiskey, beer, wine and brandy were being manufactured in the State of South Carolina. The distilleries, breweries and vineyards were producing spirituous liquors, wine and beer within the State, and the same was used as a beverage in the State and so sold within the State by State Agents, known as dispensers, at State liquor shops, known as dispensaries, under the provisions of the so-called State liquor dispensary law, (Acts 1896, 1887,) and such liquor products of the State of South Carolina were being exported to other States by its citizens from the State. Same liquors, products of other States, were being imported by the State Board of Control from other States and sold by dispensers in broken packages and unbroken original packages. The imports consisted wholly of such products of other State or States as the Board of Control chose to import. *No Products of the Vandercook vineyards have ever been imported by the Board of Control or at any time offered for sale in State liquor dispensaries in South Carolina,*" (fol. 90, Record.)

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"The United States Government has issued, upon application, licenses for wholesale and retail liquor dealers under the Revised Statutes of the United States, Sec. ——, to the State liquor dispensaries throughout the State of South Carolina, and usual license fees have been paid by the State. (Folio 90, Record.)

The testimony of *W. A. Vandercook, President* of Complainant Company, is also full to the allegations of the Bill, as follows:—(Fol. 91, Record.)

"Since the interlocutory injunction filed in the case on—— day of ———, 1897, the W. A. Vandercook Company have established in the cities of Charleston, Columbia and Greenville and other cities, agencies for storing, warehousing and selling in original unbroken packages, as imported wines, &c., products of their California vineyards. The same have not been at any time sold in any town or city where, by the law of the State of South Carolina, all sale of intoxicating liquors by the State Dispenser or otherwise is prohibited, and the same are sold in original unbroken packages as imported and not sold to minors or drunkards, not sold to be drunk on the premises, or opened on the premises, are sold in the daytime within the legal hours of sale."

"We have been and are willing to have the products of our vineyards inspected by the State of South Carolina under any lawful and reasonable system of inspection. The law of the State denies us inspection and sale of our goods in original packages in the State. There has been no demand upon us by any officer of the State for inspection of our goods sold in our agencies in original packages as imported into the State."

The plaintiff, W. A Vandercook Company, is a corporation created by and under the Laws of the State of California. (Fol. 91, Record.)

This testimony of Complainants is without contradiction.

FINAL DECREE.

The Circuit Court by final decree, made permanent the interlocutory injunction and added these words:—

"It is also further ordered that the complainants, inasmuch as they have since filing of the original bill, established as therein alleged, agencies within the State of South Carolina for warehouseing, storing and selling their wines, &c., products of their California vineyards, in original unbroken packages, as imported, must conform to all lawful police regulations of the State, to-wit: may only sell the same within the legal hours, in the daytime, and not to be opened or drunk on their premises, and not to be sold to minors or drunkards, and not to be sold in cities or places where all sale of intoxicating liquor by State Dispenser or otherwise is prohibited by law of the State, and not to be sold to anyone on Sunday." (Folios 81–82, Record.)

The practical result of the final decree of the U. S. Circuit Court is to allow the sale of the wine products of the California vineyards of the complainants in South Carolina, within the same hours, at the same places in South Carolina, and under the same conditions and regulations as the State of South Carolina, by her dispensers or selling agents, is selling the wine products and beer and spirituous liquors, products of South Carolina, as a beverage to the citizens of South Carolina. The decree of injunction secures equal rights to California wine as a lawful product alongside of the liquor products of South Carolina, remedies the wrong of its continued exclusion from the markets of the State of South Carolina, and gives same opportunity to the citizen of South Carolina to purchase and drink, as a beverage, California wine that he has under the law of South Carolina to purchase and drink South Carolina wine and liquor products.

In short, the decree puts and keeps in the wine market of South Carolina on equal terms and conditions these California wines which by the operation of the laws of South Carolina had been previously excluded from the wine market of South Carolina.

FIRST ASSIGNMENT OF ERROR.

Because the bill of complaint presents no question arising under the Constitution or laws of the United States.

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We submit this question without argument, and refer only to *Donald v. Scott, 165 U. S. 100*, where the Court held that the question whether the law of the State was, in the exercise of the police power, was one in the last instance for this Court.

See also Donald v. Scott, 165 U. S. 107.

SECOND ASSIGNMENT OF ERROR

Because the bill presents no case upon which the jurisdiction of a Court of Equity can be founded, as there are plain and adequate remedies at law for the correction of any of the matters and things alleged in the bill, if the said allegations are true.

We submit this question without argument, the same being concluded by the decision of this Court. *Donald v. Scott, 165, U. S. 107.*

THIRD EXCEPTION OF ERROR.

Because the complainant has not in and by the said bill of complaint made or stated a case to entitle said complainant in a Court of Equity to any relief against them or either of them as to the matters contained in said bill.

We submit this question on the argument on the further assignments of error.

FOURTH ASSIGNMENT OF ERROR,

Because his Honor erred in holding that the provisions of an Act of the General Assembly of the State of South Carolina approved March 6, 1896, and amended March 5, 1897, commonly known as the Dispensary Law, in so far as they forbid citizens of this State or of other States from importing ales, wines and liquors into this State for sale in original, unbroken packages, are not a lawful exercise of the police power of the State and are in contravention of the Constitution of the United States and Inter-State Commerce Acts of Congress.

FIFTH ASSIGNMENT OF ERROR.

Because his Honor erred in holding that the provisions of the said Act prohibiting the importation of liquor into this State for sale is not a valid exercise of the police power of the State and does not come within the provisions of the Act of Congress of 1890, known as the "Wilson Act."

SIXTH ASSIGNMENT OF ERROR.

Because his Honor erred in holding that the provisions of the said Act as amended, providing for the inspection of all liquors brought into the State for use or sale, is not the lawful exercise of the police power of the State and is in contravention of the Constitution of the United States.

SEVENTH ASSIGNMENT OF ERROR.

Because his Honor erred in holding that a non-resident manufacturer or dealer can import wines, ales and liquors into the State of South Carolina and store and sell the same, either by himself or through an agent, the said agent being a citizen ot this State.

These assignments (namely, the fourth, fifth, sixth and seventh,) involve the main question in this case, the constitutionality of the Dispensary Law of the State of South Carolina in prohibiting the importation into the State of South Carolina by complainant of wine products of its California vineyard and sale therein of the same in original unbroken packages, at the same time and places and under the same regulations that the State of South Carolina, by its agents, is selling the wine and liquor products of the State of South Carolina to its citizens for use as a beverage.

We contend as alleged in the Bill, (paragraph IX.)

"And your orator further shews that by and under the terms, principal, policy and operation of the said Dispensary Law of

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the State of South Carolina, as aforesaid, approved March 6th, 1896, and amended March 5th, 1897, all wines, beers, ales, alcoholic, spirituous, and other intoxicating liquors are subjects of lawful manufacture, barter, sale, export, and import in the State of South Carolina, and have been, are being, and will continue to be lawfully used and consumed as a beverage by the citizens and residents of the State of South Carolina."

"And your orator further shows that the wines and other liquors, products of your orator's vineyards, as aforesaid, are lawful subjects of inter-state and foreign trade and commerce."

"And your orator further shews that the said Dispensary Law of the State of South Carolina, in so far as it authorized any of the said acts of the said defendants, or in any way attempts to abridge your orator's right of importation of its said products of its vineyards into the State of South Carolina and there sell, in original imported packages, the same, or in anywise hinders and prevents its intercourse, commerce, and trade with the citizens and residents of the State of South Carolina in the products of its said vineyards, is in conflict with Article I., Section 8 and 9 of the Constitution of the United States, and is unconstitutional, null and void."

We contend that the complainants, citizens of the State of California, have the right to import in original unbroken packages wine products of their California vineyards, and sell the same as imported, in such packages, as long as the State of South Carolina is, through her dispensaries, selling, as she is now selling, for use and consumption to all her citizens, throughout the whole borders of the State, also, beers, wines and spirituous liquors, products of her own vineyards, distilleries and breweries, and of such other States as she chooses to patronize, and as long as the people of the State of South Carolina are actually and lawfully drinking intoxicating liquors as a beverage, That the Dispensary Law, in denying this right to the complainant of Inter-State commerce in the wine products of California vineyards, and excluding California wine from the State markets on equal terms with South Carolina products or products of other States there sold, is against the Constitution

of the United States, and is a regulation and restriction of Inter-State commerce. and is a discrimination against the products and industries of other States, which the State is powerless to make or enforce, having surrendered that power to the United States, by joining with other States in the Constitution of the United States, which delegated to Congress the exclusive power to regulate commerce between the States, and that the principle here at stake preserves the free trade of South Carolina with her sister States as to her own products, which to lose would destroy the benefits of her membership of the commercial union formed under the Constitution. The enforcement of this right, alike the privilege and pledge of each and all of the States, and the very bond of this Union, is the object of this suit.

To understand the scope and effect of the South Carolina Dispensary Law let us examine its main features, bearing on this question :

It prescribes :

"The manufacture, *sale*, barter or exchange receipt or acceptance for unlawful use, delivery, storing and keeping in possession within this State of any spirituous, malt, vinous, fermented, brewed or other liquors which contain alcohol and is used as a beverage *except as hereinafter provided*, is hereby prohibited. * * All alcoholic liquors in this State, whether manufactured within this State or elsewhere, not having been tested by the chemist of South Carolina College, and found to be pure and free from poisonous, hurtful and deleterious matter, matters are hereby declared to be of a detrimental character, and their use and consumption are against the morals, good health and safety of the State and all such liquors may be seized wherever found without warrant, etc."

"Any person resident in this State intending to *import* for *personal use* and consumption any spirituous, malt, vinous, fermented, brewed or other liquor containing alcohol from *any other State* or foreign country, shall first certify to the chemist of the South Carolina College the quantity and kind of liquor proposed to be imported, together with the name and place of

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business of the person, firm or corporation from whom it is desired to purchase, accompanying such certificate with a statement that the proposed consignor has been requested to forward a sample of such liquor to the said chemist at Columbia, South Carolina. Upon receipt of said sample the said chemist shall immediately proceed to test the same, and if found to be pure and free from any poisonous, hurtful or deleterious matters, he shall issue a *certificate* to that effect, stating therein the names of the proposed *consignor* and consignee, and the quantity and kind of liquor proposed to be imported thereunder. which certificate shall be dated and forwarded by said chemist, post paid, to the proposed *consignor* at his place. of business. The said *consignor* shall cause such certificate to be attached to the package containing the liquor when it is shipped in this State, and no package bearing such certificate shall be liable to seizure and confiscation; but any paekage of spirituous, malt, vinous, fermented, brewed. or other liquor or liquid containing alcohol *imported into this State without such certificate*, * * shall be seized and confiscated as provided in this Act. It shall be unlawful to use said certificate for more than one importation. Any person or persons convicted of selling any liquor imported under this Section shall suffer double the punishmeut for sale under * * this Act.

Section 1, Act 1896, as amended Act 1897, Appendix pp. 1 and 29, 30.

"A board, consisting of five members, to be known as the State Board of Control, shall be elected by the General Assembly at this session to carry out the provisions of this Act." (Section 2.)

"The State Board of Control, under such rules and regulations as may be adopted by said board, shall purchase *all liquors for lawful sale* in this State, and shall have the same tested and declared to be *pure*, as hereinbefore and hereinafter provided." (Section 2, Appendix p. 3, 33.)

"State Commissioner shall furnish all intoxicating liquors for *lawful sale* in this State to such persons as may be designated as dispensers thereof, to be sold as hereinafter prescribed

in this Act, shall not furnish to the county dispensers any intoxicating or fermented liquors, except such as have been tested by the chemist of the South Carolina College and declared to be pure, &c." (Section 3.) *Id.* p. 3, 33, Appendix.

"Each county dispenser shall remit to the State Treasurer all moneys accruing to the State from the sale of liquors, and State Board of Control shall draw warrants on the State Treasurer for the amount necessary to pay the expenses in conducting the business." (Section 3.) *Idem*, p. 3, 34, Appendix.

"In all purchases or sales of intoxicating liquors made as contemplated in this Act, the State Board of Control shall cause a *certificate* to be attached to each and every package containing said liquors when the same is shipped to the State Commissioner from the place of purchase, or by State Commissioner to the county dispensaries, certified by their official signatures and seal, which certificate shall state that liquors contained in said packages have been purchased by the State Board of Control for *sale* and use within the State of South Carolina, under the laws of said State, and shall also cause to be attached to all such liquors the certificate of the chemist of the South Carolina College that *samples of the same* have been tested as required by this Act; and *without such certificate any package* containing liquors which shall be shipped from place to place within this State, or delivered to the consignee by any railroad, express company, or other common carriers, or be found in the possession of any common carrier shall be *regarded* as *contraband*, and may *be seized without warrant for confiscation*, and such common carrier shall be liable to a penalty of $500 for each offence," (Section 3.) *Idem*, p. 4, 34, Appendix.

"The State Commissioner shall, before shipping any liquors to dispensers, except beer, cause the same to be put into packages of not less than one-half pint nor more than five gallons." (Section 4.) *Idem*, p. 5, Appendix.

"He shall sell by the package only, and no person shall open the same on the premises." (Section 4.) *Idem*, p. 5, Appendix.

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"Dispensers shall open their place of business, and sell only in the day time." (Section 4.) *Idem.* p. 5, Appendix

"There may be one or more county dispensers appointed for each county, the place of business of each of whom shall be designated by the County Board." (Section 7.) *Idem.* p. 6, Appendix.

"That nothing in this Act contained shall be so construed as to prohibit persons resident in counties which shall elect to have no dispensary from procuring liquors from dispensaries in other counties, or county dispensers from shipping same to their places of residence under paper labels or certificates." (Section 7.) *Idem.* p. 7, Appendix.

"*All profits*, after paying all expenses of the county dispensary, shall be paid, one-half to the County Treasurer and one-half to municipal corporation in which it may be located." (Section 9) *Id.* p. 9, Appendix.

N. B.—By previous Act, 1892, the State makes a profit of not less than 50 per cent. in selling to county dispensers.

"Any person, firm, association or corporation desiring or intending to manufacture or distill any liquors containing alcohol within this State, shall first obtain from the State board of control a permit or license so to do. Every package, barrel or bottle of such liquor shipped beyond the limits of this State shall have thereon the certificate of the State Board of Control allowing same, otherwise it shall be liable to confiscation." (Section 15.) Id. p. 13, Appendix.

"*And provided*, That any person shall have the right to make wine for his or her own use from grapes or other fruits. The inspector appointed by the State Board of Control, as herein provided, shall have the right to enter and examine, at any and all times not forbidden by the United States laws, any distillery, brewery or place where liquor containing alcohol is manufactured within this State." (Section 15.) Id. Managers of hotels may obtain license to dispense liquors *bought* from the *State Dispensary* by the bottle either night or day. Sec. 21. Appendix p. 13, 14.

"No suit shall lie for damages alleged to arise by seizure and detention of liquors under this Act." Section 22, p. 16, Appendix.

"The manager of every registered distillery of liquor in this State shall report quarterly to the State Board of Control, showing the number of gallons of each kind of liquor on hand, manufactured or *disposed* of during the quarter." (Section 23.) Id. p. 19, Appendix.

"That any of the liquors set forth in Section 1 of this Act, which are contraband, may be seized and taken without warrant by any constable, sheriff or policeman while in transit or after arrival, whether in possession of a common carrier, depot agent, express agent, private person, firm, corporation or association, and reported to the State Commissioner at once, who shall dispose of the same as hereinafter provided." (Section 25.) Id. Appendix, p. 20.

"And the State Commissioner shall have the said contraband liquors tested by the State Chemist, and *if pure* shall furnish the same through the State Dispensary. If not pure, the same shall be destroyed by the Chemist of the South Carolina College, who shall make a report to the State Board of Control of the amount and kinds of liquors so destroyed." (Section 31.) Id. p. 22, Appendix.

"That no person, *except as provided in this Act, shall bring into this State*, or transport from place to place within this State by wagon, cart or other vehicle, or by any other means or mode of carriage, any liquor or liquids containing alcohol, under a penalty of $100, or imprisonment for thirty days, for each offense, upon conviction thereof, as for a misdemeanor." (Section 33.) P. 23, Appendix.

"All alcoholic liquors, *other than domestic wine*, which do not have on the packages in which they are contained the label and *certificates* going to show that they have been *tested by the chemist and purchased from a State officer* authorized to sell them, are hereby declared contraband, and on seizure will be forfeited to the State, as provided in Section 31." (Section 35.) P. 24, Appendix.

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"That Chapter I, title VII, of the Code of Civil Procedure of this State, entitled 'Of provisional remedies in civil actions,' shall not apply to any officer or person having duties to perform under this Act, and in no case shall an action lie against any such officer or person for damages to person or property, as provided in said Chapter." (Section 45.) P. 27, Appendix.

From the foregoing provisions of this Dispensary Law of March 6th, 1896, and March 5, 1897, the principles of the Act are identical with the Act of January 2nd, 1895, in the following main features:—

(1.) The State of South Carolina has embarked in the liquor trade, with her own capital and her own officials as employès in "conducting the business;" that intoxicating liquor is with her *an article of commerce*, bought and sold and good for man, and sold by her as a beverage daily, in any quantity, in packages of one-half pint to five gallons.

(2.) That in such trade she has assumed the exclusive monopoly and suffers no competition within her borders either from within or without, and would trade herself with Indian tribes and other States and foreign nations. (*South Carolina vs. Seymour*, 153 U. S., 356.) That she conducts both domestic and Inter-State commerce in liquor.

(3.) That "the profits" of this trade are divided between the State, county and city governments.

(4.) That her attitude by the law to the liquor question is that pure alcoholic liquor is not poisonous or hurtful to the morals, health, welfare of her people, but that "pure intoxicating liquor is good for the health, morals and safety of her citizens, and that she undertakes to provide and sell to them *chemically pure alcoholic* liquor in packages of one-half pint to five gallons for their use and consumption throughout the whole State, and even where a prohibition sentiment elected not to have liquor dispensaries in certain counties citizens there resident are supplied with liquor by the State from other county dispensaries by shipments made to them.

(5.) That she allows all her private liquor manufactories, breweries and distilleries and vineyards to run in full blast as before, both to supply her own needs and ship *without inspection* their products to other States and foreign countries, giving to her liquor industries both the home and foreign markets.

(7.) That she expressly allows any person in the State to make wine for their own use in the State without any inspection whatever, while seizing any wine imported into the State made out of the State for their own use; that she expressly exempts "domestic wine from being contraband" without certificate showing it to have been tested by the chemist and purchased from a State officer.

(9.) While fixing by the Act itself "chemical alcoholic purity" as a mercantile standard and quality of her intoxicating liquor offered by her for sale and use of her citizens, she refuses inspection and sale to wines from California, though equally pure, when imported by complainant for sale; and this, too, while her laws operate to make the liquor supply for use of her own citizens come from her own products and such other as her officials choose to buy to the exclusion of products of other States.

(10.) While thus discriminating in favor of her own products and refusing to such importations inspection and sale according to her own test, the State actually seizes all liquor from another State, and if, upon her own test, it is found "pure," instead of returning it to the producer as having been found to be the merchantable standard and quality fixed as lawful and wholesome by the Act itself, the State persists in confiscating it, and even sells it to her own citizens through the dispensary, thus affirming its intrinsic good quality. The result of all of which is she practically prohibits the introduction and sale of foreign liquors, while favoring the manufacturing of her own liquor products by her citizens and favoring their use and even their development within the State, and their shipment by her own distillers, vintners and brewers to other States and foreign countries.

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(11.) While fostering her own liquor industries and selling liquor to all her citizens and the outside world and foreign nations and Indian tribes, she excludes the liquor products of sister States (by this discrimination) by a drastic system of penal laws and criminal statutes, inflicting heavy penalties against producers having such imported liquor for sale or carriers bringing it into the State, although it may be as "pure" as the local liquor product she herself sells.

(12.) That she has created a State Board of Control to conduct the liquor traffic—to buy and sell all liquors to her citizens—giving such official Board power to import or refuse to import the liquor products of any other State, while she denies all producers in other States the right to import for sale such products of other States—*i. e.*, she has made it a State privilege and monopoly to engage in inter-state commerce, to import or not to import for sale such liquors from other States, and while she is selling to her own citizens the products of her own State, and while her own citizens are manufacturing and shipping to and selling their liquor products to citizens of other States, she seizes and confiscates and denies inspection and sale according to her own test the liquor products of other States imported by producers for sale and consumption of her own citizens.

(13.) From all of which and the inevitable operation of this Act of April, 1896 and 1897, it appears that the only way in which the wine product of complainant can surely be maintained free from discrimination and can surely reach the consumer, and compete with and have equal opportunity with the local wine product sold by the State to its citizens if desired by the consumer, is through the right of the complainant producer to import into the State of South Carolina such wine products of California for sale, subject to the right of inspection according to the test of merchantable quality, and under the regulations fixed by the State, which opportunity of inspection and sale, is now denied by the Act of March 6, 1896, and March 5, 1897.

(14.) That these Acts of 1896 and 1897 although allowing a partial inter-state commerce between the producer of another State and consumer in South Carolina, by importing for personal use—that is, a purchasing of California wine in California by a resident of South Carolina and importing it into South Carolina, for personal use, still while this process of one month or more is going on, and the citizen of South Carolina is waiting for his California wine, and is put to great cost and trouble and increased freight for small packages, there is being sold by South Carolina during all that time each day and hour in her liquor market her own liquor products and certain others she imports, ready at hand and always present for immediate purchase by her citizens, and to deny complainants like inspection and sale and opportunity of sale, under same regulations alongside of and in competition with the liquor the State is selling in the State market is discriminating against the California wine in favor of her own liquor products and those she imports for sale.

(15.) That whereas by the Dispensary Act of 1895, condemned for discriminations by this Court in (*Donald vs. Scott, 165 U.S. pages 75, 79, 92, 93,*) the State Commissioner was commanded to purchase his supplies from the Brewery and distillers of South Carolina if as cheap and if their product reached the standard required by this Act, *i. e.*, "chemically pure," (whatever that may mean) and was further commanded to make special contracts with the grape growers of South Carolina to put the domestic wines on the market at only ten per cent. above actual cost and expenses to "encourage grape growing" in this State, it now appears by Act of 1896 and 1897 (appendix) that the State Board of Control and the State Commissioner have even greater powers; they are now without any limitation of authority whatsoever; they are absolutely supreme; they have power to discriminate even more; they even buy and can put local liquor products on the market, even if they cost more than products of other States; they can make the profit of domestic wine in the South Carolina market even less than ten per cent. They have complete monopoly and can put up even more the price of foreign wines, not only in domestic but also in *inter-state*

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commerce, with power to destroy or build up the wine industry of any other State. They can say, as they have said for seven years, no wine from the vineyards of five valleys:—"Freno, San Gabriel, Santa Clara, Sonoma, and Napa," of California, shall be sold in South Carolina! They can say no wine except South Carolina wine, or except South Carolina and Georgia wine shall be sold in South Carolina.

(16.) By this Act all inspection and sale of their California wine products is denied to complainant as importers for sale in South Carolina. Moreover the inspection required of the "importer for *personal use*" (Sec. 1) and limited to him specifically is void as being unreasonable, as affording no security or protection to consumer; as being by sample, and not of the original package itself; as operating extra territorially on consignor in another State or foreign country; as operating before "arrival" of the goods within the State; as being a discrimination against California wine, the *domestic wine* being exempted from test and certificate of chemist, and as being finally simply a useless device with no practical beneficial result to consumer, but operating only as a burden and hindrance on *interstate* commerce, with a view to keep out of the State all wines except South Carolina wines and such as she chooses to import for sale, and thus maintain a State liquor domestic and interstate monopoly for revenue.

On this statement of the purpose, object and result of the Dispensary Law, we announce two general legal propositions:

(1.) The Dispensary Law is not enacted in the lawful "exercise of the police power of the State" in its denial of inspection and sale of wines of complainants imported in original unbroken packages.

(2.) The Dispensary Law discriminates against the wines of complainant's California vineyards in excluding them by its operation from inspection and sale in original unbroken packages within the State of South Carolina, and is null and void as a State regulation of interstate commerce.

At the outset, let us examine the effect of the Act of Congress knowns as the "Wilson Act," 1890, which the State here sets up in justification of this Dispensary Law. It is in these words:

WILSON ACT, CONGRESS, 1890.

"That all fermented, distilled or intoxicating liquors or liquids transported into any State or Territory, or remaining therein for use, consumption, sale or storage therein, shall, upon arrival in such State or Territory, be subject to the operation and effect of the laws of *such State* or Teritory *enacted in the exercise of its police powers*, to the same extent and in the same manner as though such liquids or liquors had been produced in such State or Territory, and such shall not be exempt therefrom by reason of being introduced therein in original packages or otherwise." 26 U. S. Statutes, 313.

The State Dispensary Act assumes to enact the Wilson bill, but the Dispensary Law substitutes "this law" for the words, "Laws of such State, enacted in the exercise of its police powers."

The words of the State Dispensary Law are:

"Sec. 32. That all fermented, distilled or other liquors or liquids containing alcohol transported into this State or remaining herein for use, sale, consumption, storage or other disposition, shall, upon introduction and arrival in this State, be subjected to the operation and effect *of this law* to the same extent and in the same manner as though such liquors or liquids had been produced in this State." Dispensary Act, Sec. 32, p. 23, Appendix.

The assumption again in this Section is that "*this law*" (the State Dispensary Law) with its gross discriminations against liquor products of other States, its denial of inspection and sale of complainant's wines from California vineyards, is a law enacted in the "exercise of the police power of the State," within the meaning of the Wilson Act. The Wilson Act declares that liquor is subject only to the laws of "such State enacted in

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the exercse of its police powers," not to any law or every law of the State. It was enacted as a shield to allow the State to enforce prohibition (after Leisy vs. Hardin, 135 U. S., 100,) against the privilege of sale theretofore inhering in the original imported package, not as a sword to discriminate against products of sister States, and for the State to engage in a monopoly of the liquor traffic and protection of home products. It is a carefully guarded statute, and limits the State by its terms.

In *In Re Rahrer, 140 U. S. 545*, the Supreme Court, by Chief Justice, speaking for the Court, has clearly stated that the effect of the Wilson Act was to subject imported articles to *police power* of the State before its sale as an imported package, and not to delay its operation until after its sale as an imported package. It only brought the original imported package within its *police power* " at an earlier period of time than would otherwise be the case." Idem 562.

In the language of this Court again : " Congress did not use terms of permission to the State to act, but simply removed an impediment to enforcement of the State laws in respect to imported packages in their original condition, created by the absence of a specific utterance on its part. It imparted *no power to the State not then possessed*, but allowed imported property to fall at once upon arrival within the local jurisdiction." *In Re Rahrer 140 U. S.. 564.*

The Act did not enlarge the scope of the police power or turn over to the State absolute control of the liquor traffic ; it only allowed, upon arrival, the operation of the laws of the State enacted in the " *Exercise of its police power.*" The question whether the given law of the State was a proper and lawful exercise of the police power was carefully left open by Congress to be determined in view of the definitions and limitations of the police power of the State in the previous decisions of this Court, for in the case of *In Re Rahrer* the Court quotes the cases of this Court bearing upon the relation of the police power to the commercial power, and the Court expressly holds that this Act imparted " *no power to the State not then possessed.*"

The questions, therefore, are: (1.) Is this dispensary law a law "enacted in the exercise of the police power" within the meaning of the Act of Congress, and the decisions of this Court as to liquor imported into the State? (2.) Is the wine of complainants' California vineyards put upon the same plane as liquor produced in the State, as required by the Act of Congress, *i. e.*, does the dispensary law operate in discrimination against the wine of California vineyards of complainants?

A State law operating in discrimination, either directly or indirectly, against products of other States, in favor of products of the State enacting the law, or in favor of products of any other State, is null and void as a regulation of inter-state commerce.

To sustain this position, we cite the following authorities. On the general principles this Court has said:

"There is no attempt to discriminate injuriously against the products of other States, or the rights of their citizens. But a law having such operation would, in our opinion, be an infringement of the provisions of the Constitution which relate to these subjects and therefore void." Woodruff vs. Parham, 8 Wall., 140.

"If this can be done in reference to *liquors*, it can be done with reference to *all the products of a sister State*, and in this mode one State can establish a complete system of non-intercourse in her commercial relations with all other States of the Union." Hinson vs. Lott, 8 Wall., 150.

"The tax in the case before us, if it were of the character we suggested, discriminating adversely to the products of all the other States, in favor of those of Alabama, and *involving a principle which might lead to actual commercial non-intercourse*, would, in our opinion, belong to that class of legislation and be forbidden by the clause of the Constitution just mentioned." (8 Wall, 152.)

The burden here in case at bar is greater than a tax; it is exclusion of products of other States, in protection of local products, sold and consumed within the State.

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Again the Court say: "It will not be denied that that portion of commerce with foreign countries and between the States, which consists in the transportation and exchange of commodities, is of national importance, and admits and requires uniformity of regulation. The very object of investing this power in the General Government was to insure this uniformity against discriminating State legislation." Welton vs. Missouri, 91 U. S., 280.

"It is sufficient to hold now that the *commercial power continues until the commodity has ceased to be the subject of discriminating legislation by reason of its foreign character. That power protects it even after it has entered the State from any burden imposed by* reason *of its foreign origin.* The Act of Missouri encroaches upon this power in this respect, and is, therefore, in our judgment, unconstitutional and void." Welton vs. Missouri, 91 U. S., 282.

In 100 U. S. 439, this Court has again fully stated the principle and the reason of it as the basis of our commercial union.

"In view of these and other decisions of this Court it must be regarded as settled that no State can, consistently with the Federal Constitution, impose upon the products of other States, brought therein for sale or use, or upon citizens engaged in the sale therein or the transportation thereto, of the *products of other States* more onerous public burdens or taxes than it imposes upon the *like products* of its own territory."

"If this were not so it is easy to perceive how the power of Congress to regulate commerce with foreign nations and among the several States could be practically annulled, and the equality of commercial privileges secured by the Federal Constitution to the citizens of the seveaal States may be materially abridged and impaired. 'Over whatever other interests of the country,' said Mr. Webster, 'this Government may diffuse its benefits and blessings, it will always be true, as matter of historical fact, that it had its immediate origin in the necessities of commerce, and for its immediate object the relief of those necessities by removing their causes, and by establishing a uniform and steady sys-

tem.' But State legislation such as that indicated in the cases which have been cited, if maintained by this Court, would ultimately bring our commerce to that 'oppressed and degraded state' existing at the adoption of the present Constitution, when the helpless, inadequate confederation was abandoned and a National Government instituted, with full power over the entire subject of commerce, except that wholly internal to the State composing the Union.'' Guy vs. Baltimore, 100 U. S., 439-440,

And again in Guy vs. Baltimore, 100 U. S., 443, this Court say:

"In the exercise of its police powers a State *may exclude from its territory*, or prohibit the sale therein of any articles which, in its judgment, fairly exercised, *are prejudicial to the health or* which would endanger the lives or property of its people. But if the State, *under guise of exerting its police powers*, should make *such exclusion or prohibition applicable solely to articles* of *that kind, that may* be *produced* or *manufactured in other States*, the Courts would find no difficulty in holding such legislation to be in conflict with the Constitution of the United States."

"The power of the national government over commerce with foreign nations and among the several States is broad and comprehensive. It reaches *the interior of every State of the Union so far as it may be necessary* to *protect the products of other States* and countries from discrimination by reason of their foreign origin." Brown vs. Maryland, 12 Wheat., 419. *Guy vs. Baltimore, 100 U. S., 443.*

Again this Court expound the principle as follows:

"It was against legislation of this discriminating kind that the framers of the Constitution intended to guard when they vested in Congress the power to regulate commerce among the several States." Webber vs. Virginia, 103 U. S., 350.

"There would otherwise be no security against conflicting regulations of different States, each discriminating in favor of its own products and citizens and against the products and citizens of other States." County of Mobile vs. Kimball, 102 U. S., 691-697. Webber vs. Virginia, 103 U. S., 351.

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In Robbins vs. Shelby, Tax Dist., 120 U. S., 493, this Court, among other things, fixes the limit of the police power in inspection laws:—" It is also an established principle, as already indicated, that the *only way* in wich commerce between the States can be *legitimately affected* by State laws, is when, *by virtue of its police power*, and its jurisdiction over persons and property within its limits, a State provides for the security of the lives, limbs, health and confort of persons and the protection of property; *the passage of inspection laws to secure the due quality and measure of products and commodities:* the passage of laws *to regulate or restrict the sale of* articles deemed injurious to the health and morals of the community; and no *discriminations* can be made, by any such regulations, adversely to the *persons or property of other States;* and no regulations can be made directly affecting Inter-State commerce. Any taxation or regulation of the latter character would be an unauthorized interference with the power given to Congress over the subject." *Robbins vs. Shelby Tax Dist., 120 U. S., 493-4.* In this case it is settled that inspection laws as part of the police power, is for the purpose " of securing the *due quality* and measure of products and commodities."

" Can the *State Legislation* make it a Tennessee privilege to carry on the business of *importing goods* from *foreign countries?* If not, has it any better right to made it a *State privilege* to carry on Inter-State commerce? It seems to be forgotten, in argument, that the people of this country are *citizens of the United States*, as well as of individual States, and that they have some *rights under the Constitution and Laws* of the former independent of the latter, and free from any interference or restraint from them." (120 U. S., 496.)

And passing again on the scope of inspection laws as a part of the police power, this Court say in 125 U. S. 488, 489.

" It is impossible to justify this statute of Iowa by classifying it as an inspection law. The right of the States to pass inspection laws is expressly recognized in Art. 1, Sec. 10, of the Constitution, in the clause declaring that ' no State shall, without the consent of Congress, lay any imports or duties on

exports, except what may be absolutely necessary for executing its inspection laws. * * * 'And all laws shall be subject to the revision and control of the Congress.' The nature and character of the inspection laws of the State, contemplated by this provision of the Constitution, were very fully exhibited in the case of Turner vs. Maryland, 107 U. S. 38. 'The object of inspection laws,' said Chief Justice Marshall, in Gibbons vs. Ogden, 9 Wheat, 1, 203, 'is to improve the quality of articles produced by the labor of a country to fit them for exportation; or, it may be, for domestic use. They act upon the subject, before it becomes an article of foreign commerce among the States, and they prepare it for that purpose.' They are confined to such particulars as, in the estimation of the Legislature and according to the customs of trade, are deemed necessary to fit *the inspected articles for the market*, by giving to the purchaser public assurance that the article is in that condition, and of *that quality* which *makes it merchantable* and fit for *use or consumption*. They *are not founded on the idea that* the things in respect to *which inspection is required*, are *dangerous or noxious in themselves*. As was said in Turner vs. Maryland, 107 U. S. 38, 55: 'Recognized elements of inspection laws have always been—*quality of the article*, form, capacity, dimensions and weight of package, mode of putting up, and making and branding of various kinds—all these matters being supervised by a *public officer* having authority *to pass or not pass* the article as lawful merchandise, as it did or did not answer the *prescribed requirements*. It has never been regarded as necessary, and it is manifestly not necessary, that all of these elements should co-exist in order to make a valid inspection law. *Quality alone* may be the subject of inspection, without other requirements, or the inspection may be made to extend to all the above matters. It has never been regarded as within the legitimate scope of inspection laws to forbid trade in respect to any known article of commerce irrespective of its condition and quality, merely on account of its intrinsic nature and the injurious consequence of its use or abuse." Bowman vs. Chicago, 125 U. S., 488, 489.

Under this expounding of an *inspection law* under the Constitution of the United States, when once the State has fixed

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the merchantable quality of liquor, as it has done in the Dispensary Law, and made the test simply that it is "*pure alcoholic liquor*" so soon as the liquor was by the public officer found to answer the prescribed requirement (purity) it should be passed as lawful merchandise, But the Dispensary Law denies to the wines of complainants California vineyard inspection and sale in South Carolina, under equal regulations, under which South Carolina is selling in her market her wines and those she chooses to import. But even if found "*pure*," the State Dispensary Law confiscates the imported liquor, to sell again to its own customers.

Again in Bowman vs. Chicago 125 U. S. 490, this Court fixes clearly the limit of the police power.

"And here is the limit between the sovereign power of the State and the Federal power. That is to say, that which does not belong *to commerce* is within the jurisdiction of the *police power* of the State, and that which does belong to *commerce* is within the jurisdiction of *the United States*."

The State of South Carolina, however, in this Dispensary Act monopolizes the trade and *keeps intoxicating liquor in domestic and interstate commerce* and at the same time would usurp the jurisdiction of the United States to regulate that inter-state commerce.

And this Court say further:

"The same process of legislation and reasoning adopted by the State and its Courts could bring within the *police power* any article *of consumption* that a State might wish to exclude, whether it belonged to that which was drunk or to food and clothing."

Bowman vs. Chicago, 125 U. S. 491.

"It may not under the cover of exerting its police powers substantially prohibit or burden either foreign or inter-state commerce. * * * The reach of the Statute was

far beyond its professed object and far into the realm which is within the exclusive jurisdiction of Congress. * * * The *police power* of a State cannot obstruct foreign commerce or inter-state commerce beyond the necessity for its exercise, and under color of it, *objects not within its scope cannot be secured at the expense of the protection afforded by the Federal Constitution.* And as its range sometimes comes very near to the field committed by the Constitution to Congress, it is the duty of the Courts to guard vigilantly against any needless intrusion."

Bowman vs. Chicago, 125 U. S., 491, 492.

"But whatever may be the nature and reach of the police power of the State, it cannot be exercised over a subject confided exclusively to Congress by the Federal Constitution. It cannot invade the domain of the national government. * * * Neither the unlimited powers of a State to tax, nor any of its large police powers can be exercised to such an extent as to work a practical assumption of the powers properly conferred upon Congress by the Constitution." Bowman vs. Chicago, 125 U. S., 492, 493.

"In Brown vs. Houston, 114 U. S., 622, 630, it was declared that the power of Congress over commerce among the States is certainly so far exclusive that *no State* has power to make any law or regulation which will impose any discriminating burden or tax upon the citizens or *products of other States* coming or brought within its jurisdiction." Bowman vs. Chicago, 125 U. S., 495.

As denying the police power as an authority for the Act, the Court said, as if in anticipation of just such legislation as this Dispensary Act of South Carolina:

"If the State of Iowa may prohibit the importation of intoxicating liquors from all other States, it may also include *tobacco* or any other articles, the *use or abuse* of which it may deem deleterious. It may not choose, even, to be governed by considerations growing out of the health, comfort or peace of the community. Its policy may be directed to other ends. It may choose to establish a system directed to the *promotion and benefit*

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of its *own agriculture*, manufactures or arts of any descriptio and prevent the introduction and sale within its limits of an one or all articles that it *may select as coming into competiti with those* it *seeks to protect.* The *police power* of the State woul extend to such cases, as well as to those in which it was sough to legislate in behalf of the health, peace and morals of the pe ple. In view of the commercial anarchy and confusion th would result from the diverse exertions of power by the sever States of the Union, it cannot be supposed that the Constitutio of Congress have intended to limit the freedom of commerci intercourse among the people of the several States." Bowma vs. Chicago, 125 U. S., 494.

The Court puts its finger here on the vital question in th case; we have seen that the Act of South Carolina, 1895, w in certain particulars mandatory in protection of South Caroli wines, beers and liquors; and is still so unless repealed by A 1896 and 1897, which give even greater power to State Co missioner to protect the liquor industries of South Caroli from competition, investing him with unlimited authority, ev to extent of total exclusion of all wine products of other Stat to protect South Carolina wine products.

And again, in 135 U. S., 113, this Court puts the matter ve clearly:

"That ardent spirits, distilled liquors, ale and beer are su jects of exchange, barter and traffic, like any other commodi in which a right of traffic exists, and are so recognized by t usages of the commercial world, the laws of Congress and t decisions of Courts, is not denied."

"What does not belong to commerce is within the jurisd tion of the police powers of the State, but that which does b long to commerce is within the jurisdiction of the Unit States; that to extend the *police power* over subjects of *co merce* would be to make commerce subordinate to that pow and would enable the State to bring within the *police pow* any article of consumption that a State might wish to exclud whether it belonged to that which was drunk or to food a clothing." 135 U. S., 113, 114.

The universality of the principle governing all the States and all their products as commercial commodities is thus declared by this Court :

"The same rule applies to the sugar of Louisiana, the cotton of South Carolina, the *wines of California*, the hops of Washington, the tobacco of Maryland and Connecticut or the products, natural or manufactured, of any State, applies to all commodities in which a right of traffic exists, recognized by the laws of Congress, the decisions of Courts and usages of the commercial world." Lyng v. Mich. 135, U. S., 167.

In reply to the position of appellants that this Act is declared by its title to be an exercise of the police power, and the presumption is that it was enacted in good faith by the State, we have but to refer to the repeated decisions of this Court, among them more particularly *Minnesota v. Barber, 136 U. S.* 319-320, and Brennan v. Titusville, 153 U. S., p. 299 to show that the title of an Act and even the decision of State Supreme Courts does not control this Court in its decision of this question. In the first case the Court said :

"The presumption that this statute was enacted in good faith for the purpose expressed in the title, namely, to protect the health of the people of Minnesota, *cannot control* the final determination of the question whether it is not repugnant to the Constitution of the United States. There may be no purpose on the part of the Legislature to violate the provisions of that instrument, and yet a statute enacted by it, under the forms of law, may, by its necessary operation be destructive of rights granted or secured by the Constitution. In such cases the Courts must sustain the supreme law of the land by declaring the statute unconstitutional and void. This principle of constitutional interpretation has been often announced by this Court. In Henderson, &c. vs. New York, &c., 92 U. S. 259, 268, where a statute of New York was held to be unconstitutional and void as a regulation of such commerce, the Court said that "in whatever language a statute may be framed, its purpose must be determined by its *natural and reasonable effect.* The motives of the legislators, considered as the purpose they

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had in view, will always be presumed to be to accomplish that which follows as the natural and reasonable effect of their enactments." In Mugler vs. Kansas, 123 U. S., 623, 661, the Court, after observing that every possible presumption is to be indulged in favor of the validity of a statute, said that the judiciary must obey the Constitution rather than the law-making department of the government, and must, upon its own responsibility, determine whether, in any particular case, the limits of the Constitution have been passed. It was added:

"If, therefore, a statute, purporting to have been enacted to protect the public health, the public morals or the public safety, has no real or substantial relations to those objects, or is a palpable invasion of rights secured by the fundamental law, it is the duty of the Courts to so adjudge, and thereby give effect to the Constitution. Upon the authority of those cases, and others that could be cited, it is our duty to inquire in respect to the statute before us, not only whether there is a real or substantial relation between its avowed objects and the means devised for attaining those objects, but whether, by its *necessary or natural operation*, it impairs or destroys rights secured by the Constitution of the United States." Minnesota vs. Barber, 136 U. S., 320.

The words of the Court in that case referring to the necessary exclusion of the Act of sound meats of other States, applies with equal force to the necessary exclusion of pure wines of California, products of other States, in case at bar.

"The enactment of a similar statute by each one of the States composing the Union would result in the destruction of commerce among the several States, so far as such commerce is involved in the transportation from one part of the country to another of animal meats designed for human food, and entirely free from disease. A careful examination of the Minnesota Act will place this construction of it beyond question." (136 U. S., 321.)

"As the inspection must take place within the twenty-four hours immediately before the slaughtering, the Act, by its

necessary operation, excludes from the Minnesota market, practically all fresh beef, veal, mutton, lamb or pork—in whatever form, and although entirely sound, healthy, and fit for human food—taken from the animals slaughtered in other States; and directly tends to restrict the slaughtering of animals, whose meat is to be sold in Minnesota for human food, to those engaged in such business in that State." (136 U. S., 322.)

It will not do to say—certainly no judicial tribunal, can, with propriety, assume—that the people of Minnesota, may not, with *due regard* to their health, rely, upon *inspection in other States of animals* there slaughtered for purposes of human food. If the object of the Statute has been to deny altogether to the citizens of other States the privilege of *selling* within the limits of Minnesota, for human food, any fresh beef, veal, mutton, lamb or pork, from animals slaughtered outside that State, *and to compel the people of Minnesota, wishing to buy meats, either to purchase those taken from animals inspected and slaughtered in the State or to incur the cost of purchasing them when desired for their own domestic use at points beyond the State, that object is attained by the Act in question.* Our duty to maintain the Constitution will not permit us to shut our eyes to these obvious and necessary results of the Minnesota Statute. If this legislation does not make such discrimination against the products and business of other States, in favor of the products and business of Minnesota. It would be difficult to enact legislation that would have that result." (Idem 136 U. S., 322, 323.)

In the case at bar, not only is the duly inspected liquor of other States seized as contraband, but complainants, wine product of California vineyards, imported for sale is also denied inspection and sale under the regulations of the State altogether, and is seized and confiscated even if it is of the merchantable standard, *i. e.*, pure alcoholic liquor, fixed by the State as the test of merchantable quality in her own sales of her own products to all her citizens. And the people of South Carolina wishing to buy wine are compelled either to purchase the wine of South Carolina or such as State Commissioner may

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or not import, or incur the cost and trouble and delay of purchasing them, when desired for their own domestic use, at points beyond the State. This object is attained by the Dispensary Law of South Carolina and this is discrimination in lawful products.

And the Court further said:—

"Imposts operating as an absolute exclusion of the goods would be possible, and all the evils of discriminating State legislation, favorable to the interests of one State, and injurious to the interests of other States and countries, which existed previous to the adoption of the Constitution, might follow, and the experience of the last fifteen years shows would follow, from the action of some of the States.'" (136 U. S., 324,) and the Court quote Walling vs. Michigan, 116 U. S., 446, 455.

And this Court there announce the privilege and right of the complainants in the case at bar in these words, as well as the privilege and right of the people of South Carolina:

"The people of Minnesota have as much right to protection against the enactments of that State interfering with the freedom of commerce among the States as have the people of other States. Although this Statute is not avowedly, or in terms, directed against bringing into Minnesota of the products of other States, its necessary effect is to burden or obstruct commerce with other States, as involved in the transportation into that State, for purposes of *sale there*, of all fresh beef, veal, mutton, lamb or pork, however *free from disease* may have been the animals from which it was taken."

Minn. vs. Barber, 136 U. S., 326.

So the citizens of South Carolina, and the complainant here have as much right to protection against the enactments of that State inhibiting the importation for sale under equal regulations of the wines of California or other States, however free from adulteration and however *pure* they may be.

Further expounding the right of the non-resident producer as complainant here to have in an inspection law a test to

which he can reasonably conform this Court say in that case in comment on the case of Patterson vs. Kentucky, 97 U. S., 501:

"The Kentucky Statute prescribed no test of inspection which, in view of the nature of the property, was either unusual or unreasonable, or which by its necessary operation discriminated against any particular oil because of the locality of its production. *If it had prescribed a mode of inspection to which citizens of other States*, having oils designed for illuminating purposes, and which they desired to sell in the Kentucky market, *could not have reasonably conformed it would undoubtedly have been held to be an unauthorized burden upon Inter-State commerce.*" 136 U. S., 328.

And the Court continues:

"But a law providing for the inspection of animals whose meats are designed for human food *cannot be regarded as a rightful exercise of the police powers of the State*, if the inspection prescribed is of such character, or is burdened with such conditions as will prevent altogether the introduction into the State of *sound meats*, the product of animals slaughtered in other States. It is one thing for a State to exclude from its limits cattle, sheep or swine actually diseased, or meats that, by reason of their condition or the condition of the animals from which they are taken, are unfit for human food, and punish all sales of such animals or of such meats within the limits. It is quite a different thing for a State to declare, as does Minnesota by the necessary operation of its statute, that fresh beef, veal, mutton, lamb or pork—articles that are used in every part of this country to support human life—shall not be sold at all for human food within its limits, unless the animal from which such meats are taken is inspected in that State, or, as is practically said, unless the animal is slaughtered in that State." (136 U. S. 328.)

The South Carolina law says unless it is sold by a State Commissioner, who for seven years has never sold the wines from those California vineyards, and denies inspection and sale of them under equal test and equal regulations.

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"One other suggestion by the counsel for the State serves to be examined. It is that so far as this Statute is concerned. *the peopl: of Minnesota can purchase in other States* fresh beef, veal, mutton, lamb or pork, and *bring such meats* into Minnesota for *their personal use*. We do not perceive that this view strengthens the case for the State, for it ignores the right which the people of other States have in commerce between those States and the State of Minnesota. And it ignores the right of the people of Minnesota to bring into that State, for *purposes of sale*, sound and healthy meat, wherever such meat may have come into existence." (136 U. S. 328, 329.)

This is the precise result attained by the Dispensary Law of 1896, as amended 1897, it permits only the importation by the people of South Carolina for *personal use*. It ignores, (as this Court say) the right which people of other States (as complainant here) have in commerce between those States (California,) and the State of South Carolina.

"If the Statute, while permitting the sale of meats from animals slaughtered, inspected and 'certified' in that State, had expressly forbidden the introduction from other States, and their sale in Minnesota, of all fresh meats of every kind, without making any distinction between these that were from animals inspected on the hoof and those that were not inspected, its unconstitutionality could not have been doubted. And yet it is so framed that this precise result is attained as to all sales in Minnesota for human food, of meats from animals slaughtered in other States." (136 U. S. 329.)

"In the opinion of this Court the Statute in question, so far as its provisions require, as a condition of sales in Minnesota of fresh beef, veal, mutton, lamb or pork for human food, that the animals from which such meats are taken shall have been inspected in Minnesota before being slaughtered, is in violation of the Constitution of the United States and void." (136 U. S. 329, 330.)

In the light of these principles, so fully elaborated in this opinion, the denial to complainant of the right of importation

for sale and denial of inspection of such California wines and seizure and confiscation of all such liquors, when the State herself is selling all kinds of liquor to all her citizens, stands out as a bold usurpation of the power to regulate commerce, inhering in the Federal government.

Again this Court affirmed the principle of *Minnesota vs. Barber*, and uncovered the vice of this class of legislation in *Brimmer vs. Rebman*, 138 U. S. 81.

"The recital in the preamble that unwholesome meats were being offered for sale in Virginia cannot conclude the question of the conformity of the Act to the Constitution. 'There may be no purpose,' this Court has said, 'upon the part of the Legislature to violate the provisions of that instrument, and yet a statute enacted by it, under the forms of law, may by its necessary operation, be destructive of rights granted and secured by the Constitution;' in which case, 'the Courts must sustain the supreme law of the land by declaring the statute unconstitutional and void.' Minnesota vs. Barber, 136 U. S., 313, 319, and authorities there cited. Is the statute now before us liable to the objection that, by its necessary operation, it interferes with the enjoyment of rights granted or secured by the Constitution? This question admits of but one answer. The statute is, in effect, a prohibition upon the *sale* in Virginia of beef, veal or mutton, *although entirely wholesome*, if from animals slaughtered one hundred miles or more from the place of sale." Brimmer vs. Rebman, 138 U. S., 81.

"Whether there shall be inspection or not and whether the seller shall compensate the inspector or not, is thus made to depend entirely upon the place where the animals from which the beef, veal or mutton is taken were slaughtered. Undoubtedly a State may establish regulations for the protection of its people against the sale of unwholesome meats, provided such regulations do not conflict with the powers conferred by the Constitution upon Congress or infringe rights granted or secured by that instrument. But it may, not under the *guise of exerting its police powers or of enacting inspection laws*, make discriminations against the products and industries of some of

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the States in favor of the products and industries of some of its own or other States. The owner of the meats here in question, although they were from animals slaughtered in *Illinois, had the right, under the Constitution, to compete in the markets of Virginia upon the terms of equality* with owners of like meats from animals slaughtered in Virginia or elsewhere within one hundred miles from the place of sale. *Any local regulation which in terms or by its necessary operation, denies this in the markets of a State is, when applied to the people and products or industries of other States, a direct burden upon commerce among the States, and, therefore, void.* Welton vs. Missouri, 91 U. S., 175, 181; Railroad Company vs. Husen, 95 U. S., 465; Minnesota vs. Barber, above cited; Brimmer vs. Rebman, 138 U. S., 82.

So complainant here has the right to have inspection and sale of his wine products of his California vineyards in the markets of South Carolina, on equal terms with the wines of South Carolina or any other State now being actually sold there.

"If the object of Virginia had been to obstruct the bringing into that State for use, as human food, of all beef, veal and mutton, *however wholesome*, from animals slaughtered in distant States, that object will be accomplished if the statute before us be enforced." Brimmer vs. Rebman, 138 U. S., 83.

"It is for all practical ends, a statute to prevent the citizens of distant States, having for sale fresh meats (beef, veal or mutton,) from coming into competition upon terms of equality with local dealers in Virginia. As such, its repugnancy to the Constitution is manifest. The case, in principle, is not distinguishable from Minnesota vs. Barber, where an inspection statute of Minnesota relating to fresh beef, veal, mutton, lamb and pork offered for sale in that State, was held to be a regulation of inter-state commerce and void, because by its necessary operation it excluded from the markets of that State practically all such meats, in whatever form, and although *entirely sound* and fit for human food, from animals slaughtered in other States." Brimmer vs. Rebman, 138, U. S., 83.

"We are of opinion that the statutes of Virginia, although enacted to protect its people against the sale of unwholesome

meats, has no real or substantial relation to such an object, but by its necessary operation is a regulation of commerce, beyond the power of the State to establish." Brimmer vs. Rebman, 138 U. S., 84.

So in the case at Bar the "local dealer" is the State with a monopoly of the liquor traffic, and the operation of the State statute is the prevention of all ales, wines, beers and liquors, products of other States, however *pure* they may be, coming in competition with the local products and the State monopoly, though the South Carolina statutes proceeds on the theory that the State must furnish and sell *pure* alcoholic liquor to her citizens and protect them against *impure* liquors, it has, in the language of this case, "no real or substantial relation to "such an object, but by its necessary operation is a regula- "tion of commerce beyond the power of the State to estab- "lish."

And in Walling vs. Michigan, 116 U. S., 459, 460, the Court applied the same principle to *intoxicating liquors*, products of other States, Judge Bradley saying:

"That this must give an immense advantage to the products manufactured in Michigan, and to the manufacturers and dealers of that State, is perfectly manifest."

"It is suggested by the learned Judge who delivered the opinion of the Supreme Court of Michigan in this case that the tax imposed by the Act of 1875 is an exercise by the Legislature of Michigan of the *police power* of the State for the discouragement of the use of *intoxicating liquors*, and the preservation of the health and the morals of the people. This would be perfect justification of the Act if it did not discriminate against the citizens and products of other States in a matter of commerce between the States, and thus usurp one of the prerogatives of the National Legislature. The police power can not be set up to control the inhibitions of the Federal Constitution, or the powers of the United States Government created thereby. New Orleans Gas Co. vs. Louisiana Light Co., 115 U. S., 650, Walling vs. Michigan, 116 U. S., 459, 460.

And in *Brennan vs. Titusville*, 153 U. S., 299, the Court, by *Mr. Justice Brewer*, says:

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"Even if the license in terms had been declared to be exacted as a *police regulation*, that would not conclude this question, for whatever be the reason given to justify, or the power invoked to sustain the Act of the State, if that Act is one which trenches directly upon that which is within the executive jurisdiction of the National Government, it cannot be sustained. In New Orleans Gas Co. vs. Louisiana Light Co., 115 U. S., 650, 661, this Court, by Mr. Justice Harlan, said: 'Definitions of police power must, however, be taken subject to the condition that the State cannot, in its exercise, for any purpose whatever, encroach upon the powers of the General Government, or rights granted or secured by the supreme law of the land.'"

And re-affirming the cases above quoted, the Court say:

"That no definition of the police power, and no urgency for its use can authorize a State to exercise it in regard to a subject matter which has been confided exclusively to the discretion of Congress by the Constitution." "The police power of the State cannot obstruct foreign commerce or Inter-State Commerce beyond the necessity for its exercise; and under color of it, objects not within its scope cannot be secured at the expense of the protection afforded by the Federal Constitution. (95 U. S. 473, 474.")

And the Court distinguished "between that which is mere inspection and the legitimate exercise of the police power, and that which, under guise of inspection is a direct burden upon and obstruction to Inter-State Commerce," Brennen vs. Titusville, 153 U. S. 301.

And in *Plumley v. Mass, 155 U. S. 471* the Court again re-affirms this position and quotes with approval the case of *Walling v. Michigan*, supra, 116 U. S. 459.

And in the still later case of *Emmert v. Missouri, 156 U. S. 296*, the cases are all reviewed, the same principles are fully elaborated and illustrated.

In the light of these principles announced in these decisions of this Court the South Carolina Dispensary Law is null and void as a discriminating law not within the lawful exercise of the police power of the State and not sanctioned by the Wilson Act, August, 1890, in forbidding inspection and Sale of California wines by complainant in original, unbroken packages, as a part of Inter-State Commerce.

The general question is: Is a sale in the State of South Carolina by complainant Wine Company, citizen of California, in original imported packages, of wines, products of their vineyards, imported for sale, lawful as an Act of Inter-State commerce under the Constitution and laws of the United States.

Is the State law forbidding such sale unconstitutional under the commerce clause of the United States Constitution and laws thereunder.

PROPOSITIONS.

(1.) The commerce clause of the United States Constitution gives the right to every citizen of the United States to trade between the States unless forbidden by Congress.

(2.) The right of trade includes, among other things, the right of importing into any State any lawful article of commerce.

(3.) The right of *importation* of any such article embraces by necessary implication as an inherent, inseparable part of the importation the right to sell the same in the package in which it is imported, unless forbidden by Congress. Brown vs. Maryland. 12 Wheaton, 419.

(4.) The Wilson Act of Congress, August, 1890, is the only restraint upon the freedom of trade and sale of original imported packages of imported wines, &c., that Congress has enacted.

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(5.) The Wilson Act restrains the sale of original imported packages, only when the laws of the State make the manufacture, barter and sale of intoxicating liquors unlawful.

Donald vs. Scott, 165 U. S. 100.

(6.) The dispensary law of South Carolina, 1897, as well as 1895, 1896, recognizes as lawful the manufacture, sale and use of intoxicating liquor, and "therefore is not within the scope or operation of the Wilson Act," and so decided by the Supreme Court of the United States, in Donald vs. Scott, 165 U. S., 100. And State dispensary law not being within the scope and operation of the Wilson Act, liquor is in the language of the Court a legitimate subject of foreign and interstate trade and commerce, and has, under the Constitution and laws of the United States, the same measure of protection from Federal Courts as is given to *other articles.*

(7.) In addition also this dispensary law (1897 as well as 1895) is not an Act lawfully enacted in the exercise of the police power of the State, because it operates to deny "equal regulation for inspection and sale of all imported and domestic liquors," and thereby operates to discriminate injuriously against and to exclude and deny inspection and sale in the market of the State to the wines of complainant, products of the State of California.

The following principles were decided in *Gibbons vs. Ogden, 9 Wheaton 1.* The power to regulate commerce is general and has no limitations but such as are prescribed in the Constitution itself. Page 196.

The power to regulate commerce, so far as it extends, is exclusively vested in Congress, and *no part of it can be exercised by a State.* Page 198. The origin of vesting in Congress the power to regulate commerce is thus stated in Gibbons vs. Ogden, p. 224.

"For a century the States had submitted with murmurs, to the commercial restrictions imposed by the parent State; and now, finding themselves in the unlimited possession of those powers over their own commerce, which they had so long been

deprived of, and so earnestly coveted, that *selfish principle* which, *well controlled*, is so *salutary*, and which, *unrestricted*, is so *unjust and tyrannical*, guided by *inexperience* and jealousy, began to show itself in iniquitous laws and impolitic measures, from which grew up a conflict of commercial regulations, destructive to the harmony of the States, and fatal to their commercial interests abroad."

"This was the immediate cause that led to the forming of a convention."

"Power to regulate commerce extends to every species of commercial intercourse between the United States and foreign nations and among the several States. It does not stop at the external boundary of the State." Pages 193, 195.

"Commerce in its simplest signification means an exchange of goods." Page 229.

In the case of *Brown vs. State of Maryland*, 12 Wheaton, 419, the scope and effect of importation as a part of Inter-State commerce was finally decided in that case. The State of Maryland attempted to enforce a license tax against the importer of original packages and sale without license. The Court held, pages 445, 446, 447, 448, 449:—

1. That the Act was repugnant to the article of the Constitution that no State shall allay any impost on duties on imports or exports.

2. Is it also repugnant to that clause in the Constitution which empowers "Congress to regulate commerce with foreign nations, and among the several States, and with the Indian Tribes?"

"The oppressed and degraded state of commerce previous "to the adoption of the Constitution can scarcely be forgotten. "It was regulated by foreign nations with a single view to "their own interests; and our disunited efforts to counteract "their restrictions were rendered impotent by want of com-"bination. Congress, indeed, possessed the power of making

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"treaties; but the inability of the Federal Government to "enforce them had become so apparent as to render that "power in a great degree useless.

"Those who felt the injury arising from this state of things, "and those who were capable of estimating the influence of "commerce on the prosperity of nations, perceived the neces- "sity of giving the *control* over this important subject to a "*single government*. It may be doubted whether any of the "evils proceeding from the feebleness of the Federal Govern- "ment, contributed more to that great revolution which in- "troduced the present system, than the deep and general "conviction, that commerce ought to be regulated by Con- "gress. It is not, therefore, matter of surprise, that the grant "should be as extensive as the mischief, and should compre- "hend all foreign commerce, and *all commerce* among the "States. To construe the power so as to impair its efficacy, "would tend to defeat an object, in the attainment of which "the American public took and justly took, that strong "interest which arose from a full conviction of its necessity."

"What, then, is the *just extent* of a power to regulate com- "merce with foreign nations, and among the several States?

"This question was considered in the case of Gibbons vs. "Ogden, (9 Wheat., Rept. 1.) in which it was declared to be "complete in itself, and to acknowledge no limitations other "than are prescribed by the Constitution. The power is co- "extensive with the subject on which it acts, and cannot be "stopped at the external boundary of the State, but must "enter its interior."

"We deem it unnecessary now to reason in support of these "propositions. Their truth is proved by facts continually "before our eyes, and was, we think, demonstated, if they "could require demonstration, in the case already mentioned."

"If this power reaches the interior of the State, and may be "there exercised, it must be capable of authorizing the *sale* "of those articles which it introduces. Commerce is *inter-*

"*course*; one of its most *ordinary ingredients is traffic*. It is "inconceivable, that the power to authorize this traffic, which "is given in the most comprehensive terms, with the intent "that its efficacy should be complete, should *cease* at the point "when its continuance is indispensable to its value. To what "purpose should the power to allow importation be given, "unaccompanied with the power to authorize *a sale* of the "*thing imported?* *Sale* is the object of importation, and is an "*essential ingredient* of that intercourse, of which importation "constitutes *a part*. It is *as essential* an ingredient, as indis-"pensable to the existence of the entire thing, then, "*as importation itself*. It must be considered as a "*component part* of the power to regulate commerce. Con-"gress has a right, not only to authorize importation, but to "authorize the importer to sell."

"If this be admitted, and we think it cannot be denied, what can be the meaning of an Act of Congress which authorizes importation, and offers the privilege for sale at a fixed price to every person who chooses to become a purchaser? How is it to be construed, if an intent to deal honestly and fairly, an intent as wise as it is moral, is to enter into the construction? What can be the use of the contract, what does the importer purchase, if he does not purchase the privilege to *sell?*"

"What would be the language of a foreign government which should be informed that its merchants after importing according to law, were forbidden to *sell* the merchandise imported? What answer would the United States give to the complaints and just reproaches to which such an extraordinary circumstance would expose them? No apology could be received, or even offered. Such a state of things would break up *commerce*. It will not meet this argument, to say, that this state of things will never be produced; and that the good sense of the State is a sufficient security against it. The Constitution has not confided this subject to that good sense. It is placed elsewhere. The question is, where does the power reside? not, how far will it be probably abused? The power claimed by the State is, in its nature, in conflict with that given to Congress; and the greater or less extent in which it may be exercised does not enter into the inquiry concerning its existence."

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"We think, then, that if the power to authorize *a sale* exists in Congress, the conclusion that the right *to sell* is connected with the law permitting *importation*, as an *inseparable incident* is inevitable."

"If the principles we have stated be correct, the result to which they conduct us cannot be mistaken. Any penalty inflicted on the importer for *selling* the article in his character of *importer*, must be in opposition to the Act of Congress which authorizes *importation*. Any charge on the introduction and incorporation of the article into and with the mass of property in the country, must be hostile to the power given to Congress to regulate *commerce*, since an *essential part* of that regulation and *principal object* of it, is to prescribe the regular means for accomplishing that introduction and incorporation." p. 448.

"It may be proper to add, that we suppose the principles laid down in this case, to apply to importations from a *sister State*." p. 449.

It was pointed out also in this case at page 442 that the United States in authorizing importation and exacting a duty on foreign imports authorized a sale of the imported packages. "The object of importation is *sale*."

"It constitutes the motive for paying the duties," 442. In the case at bar, the Wilson Act not applying, the right of importation from France of its wines for which the United States exacts duties, includes under Brown v. Maryland the right of *sale* in imported packages, and exists under direct sanction of the Federal Government, in authorizing importation.

"The regulation of *commerce* applies to the *subjects* of *commerce* and not to matters of internal police. Contracts to buy, SELL, or *exchange goods* to be transported among the several States, the transportation and its instrumentalities, and *articles bought, sold, or exchanged*, for the purpose of such transit among the States, or put in the way of transit, may be regulated, but this is because they '*form part of interstate* trade or *commerce*.'"

United States vs. E. C. Knight Co., 156 U. S., 13.

We call particular attention of the Court that under this language of the Court, all of these things form a "*part* of interstate trade or commerce."

And in Leisy vs. Hardin, 135 U. S., 100, 118, the Supreme Court overruled the case of *Pierce vs. New Hampshire, 5 Howard, 504*, in which it was held unlawful to sell a barrel of gin imported from Boston to Portsmouth, and sell in Portsmouth in original package, (page 115); and asserted to its fullest the doctrine of Brown vs. Maryland, and spoke as follows, 110, 111, 112:

"In Brown vs. Maryland (*supra*) the Act of the State Legislature drawn in question was held invalid, as repugnant to the prohibition of the Constitution upon the States to lay any impost or duty upon imports or exports, and to the clause granting the *power to regulate commerce;* and it was laid down by the great magistrate who presided over this Court for more than a third of a century, that the point of time when the prohibition ceases, and the power of the State to tax commences, is not the instant when the article enters the country, but *when the importer has so acted upon it that it has become incorporated and mixed up with the mass of property in the country, which happens when the original package is no longer such in his hands;* that as to the power to regulate commerce, none of the evils which proceeded from the feebleness of the Federal Government contributed more to the great revolution which introduced the present system, than the deep and general conviction that commerce ought to be regulated by Congress; that the grant should be as extensive as the mischief, and should comprehend all foreign commerce and all commerce among the States that that power was *complete in itself*, acknowledged *no limitations* other than those prescribed by the Constitution, was co-extensive with the subject on which it acts and not to be stopped at the external boundary of a State, but must be capable of entering its interior; that the *right to sell* any article imported was an *inseparable incident* to the right to import it; and that the principles expounded in the case applied equally to *importation from a sister State*. Manifestly this must be so, for the same public policy applied to commerce among the States as to foreign commerce, and not a reason

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could be assigned for confiding the power over the one which did not conduce to establish the propriety of confiding the power over the other. Story, Constitution. Sec. 1066. And although the precise question before us was not ruled in Gibbons v. Ogden and Brown v. Maryland, yet we think it was virtually involved and answered, and that this is demonstrated, among other cases, in *Bowman v. Chicago & Northwestern Railway Co.*, *125 U. S. 465*. In the latter case, Section 1553 of the Code of the State of Iowa as amended by c. 143 of the Acts of the twentieth General Assembly in 1886, forbidding common carriers to bring intoxicating liquors into the State from any other State or Territory, without first being furnished with a *certificate* as prescribed, was declared invalid, because essentially a regulation of commerce among the States, and not sanctioned by the authority, expressed or implied of Congress. The opinion of the Court, delivered by Mr. Justice Matthews, the concurring opinion of Mr. Justice Field, and the dissenting opinion by Mr. Justice Harlan, on behalf of Mr. Justice Waite, Mr. Justice Gray and himself, discussed the question involved in all its phases; and while the determination of whether the right of transportation of an *article of commerce* from one State to another includes by *necessary implication* the *right of the consignee to sell it in unbroken packages* at the place where the transportation terminates was in terms reserved, yet the argument of the majority conducts irresistibly to *that conclusion* and we think we cannot do better than repeat the grounds upon which the decision was made to rest. It is there shown that the transportation of freight or the "*subjects of commerce*," *for the purpose of exchange or* SALE, is beyond all questions a *constituent of commerce itself*; That this was the *prominent idea* in the minds of the framers of the Constitution when to congress was committed the power to regulate commerce among the several States; that the power to prevent embarrassing restrictions by any State was the end desired: that the power was given by the same words and in the same clause by which was conferred power to regulate commerce with foreign nations; and that it would be *absurd* to suppose that the transmission of the *subject of trade* from the State of the buyer, or *from the place of production to the market*, was not contemplated, for without that there could be no *consummate*

trade, either with foreign nations or among the States." 135 U. S. p. 110, 111. 112.

In Leisy vs. Hardin, 135 U. S., 124, "the plaintiffs in error are citizens of Illinois, are not pharmacists, and have no permit, but import into Iowa beer, which they sell in original packages, as described. Under our decision in Bowman vs. Chicago, &c., Railroad Co., *supra*, they had the right to import this beer into that State, and in the view which we have expressed they had the right *to sell it*, by which *Act alone it would become mingled in the common mass of property within the State*. Up to that point of time we hold that in the absence of Congressional permission to do so, the State had no power to interfere by seizure, or any other action, in prohibition of importation and *sale* by the foreign or non-resident importer."

"We cannot hold that any articles which Congress recognizes as *subjects of Inter-State commerce* are not such." P. 125. Idem.

"To concede to a State the power to exclude, directly or indirectly, articles so situated, without Congressional permission, is to concede to a majority of the people of a State represented in the State Legislature, the power to regulate commercial intercourse between the States by determining what shall be its *subjects*, when that power was distinctly granted to be exercised by the people of the United States, represented in Congress, and its possession by the latter was considered essential to that more perfect Union which the Constitution was adopted to create." P. 125-135 U. S.

We call the Court's attention to the technical words "*subjects of Inter-State commerce*," and their fixed meaning by this case, as being articles that can be imported and sold as imported articles in original packages.

"In *Donald vs. Scott*, 165, U. S., 91, 93, 100, the Supreme Court *twice* use this phrase, that has a *fixed meaning* in the Courts.

Again, in Lyng *vs. Michigan*, *135 U. S., 166-67*.

"That the *right of importation* of ardent spirits, distilled liquors, ale and beer from one State into another, includes, by

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necessary implication, the *right of sale in the original packages*, at the place where the importation terminates, and that the power cannot be conceded to a State to exclude, directly or indirectly, the *subjects of inter-state commerce*, or by the imposition of burdens thereon, to regulate such commerce, without Congressional permission. The same rule that applies to the sugar of Louisiana, the *cotton of South Carolina*, the *wines of California*, the hops of Washington, the *tobacco of Maryland and Connecticut*, or the products, natural or manufactured, of any State, applies to *all commodities* in *which a right of traffic exists*, recognized by the laws of Congress, the decisions of Courts and the usages of the commercial world. It devolves *on Congress* to indicate such exceptions as in its judgment a wise discretion may demand under particular circumstances."

We call attention of the Court to the lanaguage again:

"The subject of inter-state commerce," all commodities in which a right of traffic exists, have a *right of sale* in original packages."

This is the *inter state commerce* shop—or market.

The only question is: "Is it a subject of inter-state commerce?"

After the passage of the Wilson Bill the first case that had the attention of the Supreme Court was that of *in re Rahrer*, 140 *U. S.*, *545*. That was a case of the sale of liquor in original packages in State of Kansas by the agent of dealers in the State of Missouri.

The Constitution of Kansas provided that "the manufacture and sale of intoxicating liquors should be forever prohibited in this State, etc.," 548. The Court held:

"The Act of August 8, 1890, 26 Stat., 313, c. 728, Wilson Act is a valid and constitutional exercise of the legislative power conferred upon Congress, and, after that Act took effect, such liquors or liquids, introduced into a State or Territory from another State, whether in original packages or otherwise, be

ame subject to the operation of such of its then existing laws s had been *properly enacted* in the exercise of its *police* powers, mong which was the *statute in question* as applied to the peti-ioner's offence." Page 545-6. Rubric 140 U. S.

The Court further said :

"The power of Congress to regulate commerce among the several States, when the subjects of that power are national in heir nature, is also exclusive. The Constitution does not pro-vide that inter-state commerce shall be free, but, by the grant of his exclusive power to regulate it, it was left *free*, except as Congress might impose restraint. Therefore it has been deter-mined that the failure of Congress to exercise this exclusive power in any case is an expression of its will that the subject shall be free from restrictions or impositionss upon it by the several States." Page 555. 140 U. S.

"Commerce, undoubtedly, is traffic," said Chief Justice Mar-shall, but it is something more; it is intercourse. It describes the commercial intercourse between nations and parts of na-tions in all its branches, and is regulated by prescribing rules for carrying on that intercourse." Unquestionably, fermented, distilled or other intoxicating liquors or liquids are *subjects of commercial intercourse*, exchange, barter, traffic, between na-tion and nation, and between State and State, *like any other commodity in which a right of traffic exists*, and are so recog-nized by the usages of the commercial world, the laws of Con-gress and the decisions of Courts." Page 556.

In Re Rahrer, 140, U. S.

"That is to say, that which *does not belong to commerce*, is within the jurisdiction of the *police power* of the State; and that which *does belong to commerce* is within the jurisdiction of the *United States*. And to this limit must all the general views come, as I suppose, that were suggested in the reasoning of this Court in the cases of Gibbons vs. Ogden; Brown vs. the State of Maryland and New York vs. Miln. What, then, is the assumption of the State Court? Undoubtedly, in effect, that the State had the power to declare what should be an article *of lawful commerce in the particular State;* and, having

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declared that ardent spirits and wines are deleterious to the morals and health, they ceased to be *commercial commodities there*, and that *then* the *police power* attached, and consequently the powers of Congress could not interfere. The exclusive State power is made to rest, not on fact of the State or condition of the article, nor that it is property usually passing by sale from hand to hand, but on the declaration found in the *State laws*, and asserted as the *State policy*. that it shall be EXCLUDED FROM COMMERCE.." Page 558, In Re Rahrer, 140 U. S.

" The laws of Iowa under consideration in Bowman vs. Railway Company, 125 U. S., 465, and Leisy vs. Hardin, 135 U. S., 100, were enacted in the *police power* of the State, and not at all as regulations of commerce with foreign nations and among the States, but as they inhibited the receipt of an imported commodity, or its disposition before it had *ceased to become an article of trade* between one State and another, or another country and this, they amounted in effect to a regulation of such commerce. Hence, it was held that inasmuch as *inter-state commerce*, consisting in the *transportation, purchase, sale and exchange of commodities*, is national in its character and must be governed by a uniform system, so long as Congress did not pass any law to regulate it specifically, or in such way as to allow the laws of the State to operate upon it, Congress thereby indicated its will that such *commerce should be free and untrammelled*, and therefore that the laws of Iowa, referred to were inoperative, in so far as they amounted to regulations of foreign or inter-state commerce, in inhibiting the reception of such articles within the State, or *their sale upon arrival*, in the form in which they were imported there from a foreign country or another State. It followed as a corollary, " that when Congress acted at all, the result of its action must be to operate as a restraint upon that *perfect freedom* which its silense insured."

In Re Rahrer, 140, U. S. Pages 559, 560.

" Congress did not use terms of permission to the State to act, but simply removed an impediment to the enforcement of the State laws, in respect to imported packages in their original condition, created by the absence of a specific utter-

ance on its part. It *imparted no power to the State not then possessed*, but allowed imported property to fall at once upon arrival within the local jurisdiction." Page 564. *In Re* Rahrer, 140 U. S., 564.

The question, therefore, of the relation of the Dispensary Law of South Carolina to the Wilson Act, August 1890, is the vital question.

In the Supreme Court of the United States, decided in Re Rahrer, 140 U. S, 545, that the Wilson Act did apply to the State law which forbade the manufacture, sale and use of intoxicating liquor, and held that by the State Act intoxicating liquor was *taken out of commerce* and put under the police power.

The question remained whether the Dispensary Law of South Carolina, which did not take intoxicating liquor out of commerce, either domestic or inter-state, but under which its manufacture, sale and use as a beverage was lawful, could be construed to be within the scope of the Wilson Act. In other words, was the Dispensary Law "a law enacted in the lawful exercise of the police power of the State, within the meaning of the Wilson Act?" This question the Supreme Court has answered in the negative, and fully and clearly set forth the broad principle which governs every case in which the question can be asked. It also gives fully the reasons for the principle clearly and elaborately, based on its former decisions above quoted, It also furnishes, in clear terms, a chart for future guidance, and announces the duty of the Federal Courts on this question. It not only declares that the South Carolina Dispensary Law is not within the scope of the Wilson Act, but declares what law would be within its scope. See *Scott vs. Donald*, 165 U. S., 58; and especially see the following passages in that opinion.

"So long, however, as State legislation continues to recognize wines, beer and spirituous liquors as *articles* of lawful consumption and *commerce*, so long must continue the duty of the Federal Courts to afford to such use and *commerce* the *same measure* of protection, under the Constitution and laws of the United States, as is given to *other articles*." P. 91, 165 U. S., Donald vs. Scott.

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"It is important to observe that the statute before us does not purport to prohibit either the importation, the manufacture, the sale or the use of intoxicating liquors." P. 91, 92, 165, U. S., Donald vs. Scott.

"When those subsequent provisions are examined, we find that, so far from the importation, manufacture and sale of such liquors being prohibited, those operations are turned over to *State functionaries*, by whom alone, or under whose direction, they are so be carried on." P. 92, 165 U. S., Donald vs. Scott.

"In view of these and similar provisions, it is indisputable that whatever else may be said of this Act, it was not intended to prohibit the manufacture, *sale* and use of intoxicating liquors On the contrary, liquors and wines are recognized as commodities which may be lawfully made, bought and *sold* and *must* therefore be deemed to be the *subject* of foreign and *inter-state commerce*." Donald vs. Scott, 165 U. S., 93.

"And here is the limit between the sovereign power of the State and the Federal power. That is to say, that which does not *belong to commerce* is within the jurisdiction of the *police power* of the State and that which does *belong to commerce* is within the jurisdiction of the United States. * * * * The same process of legislation and reasoning adopted by the State, and its Courts would bring within the *police power* any article of consumption that a State might wish to exclude, whether to that which was drank or to feed and clothing." Donald vs. Scott, p. 95. 165 U. S.

"In Leisy vs. Hardin, 135 U. S., 100, it was recognized that ardent spirits, distilled liquors, ale and beer are subjects of exchange, barter and traffic like any other commodity in which a right of traffic exits, and that being thus *articles of commerce* a State cannot, in the absence of legislation on the part of Congress, prohibit their importation from abroad or from a sister State, nor when imported prohibit *their sale* by the importer, and, accordingly, it was held that a statute of the State of Iowa, prohibiting the sale of any intoxicating liquors, except for

pharmaceutical, medicinal, chemical or sacramental purposes, and under a license from a county Court of the State, was as applied to a *sale by the importer*, and in the original packages or kegs, unbroken and unopened, of such liquors manufactured and brought from another State, unconstitutional and void as repugnant to the clause of the Constitution granting to Congress the power to regulate *commerce* with foreign nations and among the several States." P. 96. 165 U. S. Donald v. Scott.

"In Minnesota vs. Barber, 136 U. S. 313, 326, 328, the facts so closely resemble those shown by the record now under consideration, and the principles stated in the opinion are so applicable that we shall state them with some particularity." P. 95, 96. 165 U. S. Donald v. Scott.

"This Court, in an opinion delivered by Mr. Justice Harlan while conceding that the statute was enacted in good faith, for the purpose expressed in the title, namely, to protect the health of the people of Minnesota, held that, as the *necessary effect* of the Act was to deny altogether to the *citizens of other States* the privilege *of* SELLING, within the limits of Minnesota, for human food, any fresh beef, mutton, veal or pork, from animals slaughtered outside of the State, and to compel the *people of Minnesota*, wishing to buy such meats, either to purchase those taken from animals inspected and slaughtered in the State, or *to incur the cost of purchasing them, when desired for their own* DOMESTIC USE, at *points beyond the State* such legislation was void as constituting a discrimination against the *products and business of other States* in favor of the products and business of Minnesota, and as depriving the people of Minnesota the right to bring into that State, for the purposes of SALE AND USE, sound and healthy meat, wherever such meat may have come into existence, It was said: P. 97. 165 U. S. * * * * "It is, however, *contended*, in behalf of the State, that there is in fact no *interference* by this Statute, with the bringing of cattle, sheep and swine into Minnesota from other States, nor any discrimination against the products and business of other States, for the reason—*such is the argument*—that the

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Statute requiring an inspection of animals on the hoof, as a condition of the privilege of selling, or offering for sale, in the State, the meats taken from them, is applicable alike to *all owners of such animals, whether citizens of Minnesota or citizens of other States.* To this we answer *that a Statute may, upon its face, apply equally to the people of all the States, and yet be a regulation of Inter-State commerce which a State may not establish. A burden imposed by a State upon Inter-State commerce is not to be sustained simply because the Statute imposing it applies alike to the people of all the States, including the people of the State enacting such Statute.* Robbins vs. Shelby Taxing District, 120 U. S., 489, 497; case of the State Freight Taxing District, 15 Wall., 232. The people of Minnesota have as much right to protection against the enactments of that State, interfering with the freedom of *commerce among* the States, as have the *people of other States.* Although this Statute is not avowedly, or in *terms*, directed against the bringing into Minnesota of the products of other States, its *necessary effects* is to burden or affect commerce with other States, as involved in the transportation into that State, for the *purposes of sale there*, of all fresh beef, veal, mutton, lamb or pork, however free from disease may have been the animals from which it was taken."

Donald vs. Scott, 165 U. S. 98.

"The same reasoning prevailed in Brimmer vs. Rebman, *138 U. S., 78.* See particularly p. 82, 83. * *

"After the decision in Leisy vs. Hardin, and perhaps, in pursuance of some observations contained therein, Congress passed the Act of August 8, 1890, 26 Stat., 313, c. 728, enacting " that all fermented, distilled or other intoxicating liquors, or liquids, transported into any State or Territory, or remaining therein for USE, CONSUMPTION, SALE or storage therein, shall upon arrival in such State or Territory be subject to the operation and effect of the laws of such State or Territory enacted in the exercise of its *police powers* to the same extent and in the same manner as though such liquids or liquors had been produced in such State or Territory, and shall not be exempt therefrom by reason of being introduced therein in *original packages* or otherwise," This law was approved as

valid, in the case of In Re Rahrer, 140 U. S., 545, and a provision of the Constitution of Kansas, which provided that the *manufacture* and *sale* of intoxicating liquors shall be forever *prohibited* in that State, except for medicinal, scientific and mechanical purposes, and an Act passed in enforcement thereof, making penal the manufacture, sale or barter of any spirituous, malt, vinous, fermented or other intoxicating liquors were *held to be efficacious*, and that imported liquors or liquids shall, upon arrival in a State, fall within the category of domestic articles of a similar nature." P. 99, 165 U. S., Donald vs. Scott.

But of this South Carolina Dispensary Law the Supreme Court say (Donald vs. Scott, 165 U. S., p. 100:) "It is not a law purporting to forbid the importation *manufacture*, *sale* and *use* of intoxicating liquors, as articles detrimental to the welfare of the State and to the health of the inhabitants, and HENCE it is *not* within the *scope and operation of the Act of Congress of August, 1890.* That law was not intended to confer upon any State the power to discriminate injuriously against the products of other States in articles whose *manufacture* and *use* are not forbidden, and which are *therefore* the *subjects of legitimate commerce.* When that law provided that "all fermented, distilled "or intoxicating liquors transported into any State or Terri- "tory, remaining therein for *use, consumption, sale* or storage "therein, should, upon arrival in such State or Territory, be "subject to the operation and effect of the laws of such State "or Territory enacted in the exercise of its *police powers*, to the "*same extent* and in the same manner as though such liquids "or liquors had been produced in such State or Territory, and "should not be exempt therefrom by reason of being intro- "duced therein in original packages or otherwise," evidently *equality or uniformity* of treatment under State laws was intended. The question whether a given State law is a *lawful exercise* of the police power is still open, and must remain open, to this Court."

"1. Such a law may forbid entirely the *manufacture* and *sale* of intoxicating liquors and be valid."

"2. Or it may provide equal regulations for the *inspection* and SALE of *all* domestic and *imported* liquors and be valid. But

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the State cannot, under the Congressional legislation referred to, establish a system which, in effect, discriminates between *Inter-State* and *domestic* commerce in commodities to make and use which are admitted to be lawful." p. 100. 165 U. S. Donald v. Scott.

"It is sufficient for the present cases to hold, as we do, that when a State recognizes the *manufacture, sale* and *use* of intoxicating liquors as lawful, it cannot discriminate against the bringing of such articles in, and *importing them* from other States; that such legislation is void as a hindrance to *Inter-State commerce* and an *unjust preference* of the products of the *enacting State* as against similar products of the other States."

Donald v. Scott, 165 U. S., 101.

And it is well to remember just here, and all through this case, what the Supreme Court of the United States has said as to power to prevent the bringing in and importing of an article, and the power of *selling* that article. The principle is fixed. Chief Justice Marshall for Court, said:

"There is no difference in effect between a power to prohibit the *sale* of an article and a power to prohibit its introduction into the country."

Brown v. Maryland. 12 Wheaton, 439.

The State Dispensary law is powerless to prevent the importation, it must be powerless to prevent the *sale* of the imported original package as such.

The clear utterances of the Supreme Court establish two propositions, on each of which independently we rest this case:

I. THE DISPENSARY LAW, 1896 AND 1897, OF SOUTH CAROLINA, BECAUSE NOT PURPORTING TO PROHIBIT THE MANUFACTURE, SALE AND USE OF INTOXICATING LIQUORS AS A BEVERAGE, IS FOR THIS REASON, NOT WITHIN THE SCOPE AND OPERATION OF THE WILSON ACT, AND THAT IMPORTED LIQUOR IS THEREFORE AN ARTICLE OF INTER-STATE AND FOREIGN COMMERCE; IS "LEGITIMATE SUBJECT

OF COMMERCE," AND MUST BE PROTECTED LIKE ALL OTHER ARTICLES OF INTERSTATE COMMERCE; AND THAT SALE IN ORIGINAL, UNBROKEN PACKAGES IS INHERENT AND INSEPARABLE PART OF THE RIGHT OF IMPORTATION, IN THE SAME MEASURE, AS OTHER ARTICLES OF SUCH INTER-STATE COMMERCE.

II. THAT ALSO, BY SCOTT VS. DONALD, 165 U. S., 100, THE ALTERNATIVE OF PROHIBITION, CAREFULLY STATED BY THE COURT, AS A MEASURE OF EQUALITY THAT WOULD MEET REQUIREMENTS OF A VALID EXERCISE OF THE POLICE POWER WAS: "PROVISION FOR "EQUAL REGULATION FOR INSPECTION AND SALE OF ALL DOMESTIC AND IMPORTED LIQUOR:" SCOTT VS. DONALD, 165 U. S., 100. AND THAT THIS DISPENSARY LAW OF 1896 AND 1897, IS NOT SUCH A LAW, MAKES NO SUCH PROVISION, BUT DISCRIMINATES AGAINST COMPLAINANT'S CALIFORNIA WINES IN DENYING THEM ALTOGETHER ANY INSPECTION OR SALE WITHIN THE STATE.

PROPOSITION I.—THE DISPENSARY LAW 1896 AND 1897, OF SOUTH CAROLINA, BECAUSE NOT PURPORTING TO PROHIBIT THE MANUFACTURE, SALE AND USE OF INTOXICATING LIQUORS, IS FOR THIS REASON, NOT WITHIN THE SCOPE AND OPERATION OF THE WILSON ACT AND THAT LIQUOR IS THEREFORE AN ARTICLE OF INTER-STATE AND FOREIGN COMMERCE; IS "LEGITIMATE SUBJECT OF COMMERCE," AND MUST BE PROTECTED LIKE ALL OTHER ARTICLES OF INTER-STATE COMMERCE; AND THAT SALE IN ORIGINAL, UNBROKEN PACKAGES IS INHERENT AND INSEPARABLE PART OF THE RIGHT OF IMPORTATION, IN THE SAME MEASURE AS OTHER ARTICLES OF SUCH INTER-STATE COMMERCE.

We must remember that the general attitude of the United States to this question is "Ardent spirits, wines, &c., are subjects of exchange, barter and traffic, like *any "other commodity* in which a right of traffic exists and are so recognized by the "usages of the commercial world, and the laws of Congress," (Eg. Revenue & Custom Laws,) Leisy vs. Hardin, 135 U. S., 110.

This Federal policy is that liquor is in "Commerce." The Wilson Act "gave the State no more power," but allowed a

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"State law (eg. prohibition) that took it out of *domestic commerce* to "*operate sooner*," *i. e.*, on arrival and before sale in original packages, and thus take it *also* out of Federal and inter-state commerce as to that State. (*In Re* Rahrer, 140 U. S.) 562.

But when the State Dispensary law, does not take liquor out of domestic commerce, how can it be claimed to "operate sooner" to take it out of federal or inter-state commerce?

How can it do for Federal or Inter-State commerce what it does not do for domestic commerce?

If it is in domestic commerce, how is it possible to take it out of Federal or Inter-State commerce, when the Wilson Act was for the purpose of taking it out (as an exception) of Federal or Inter-State commerce *only* when by State Law it "ceased to be a commercial commodity," *i. e.*, taken out of *domestic* commerce.

The State is estopped to say it can be taken out of Federal or Inter-State commerce, when it is and remains in domestic commerce.

It is perversion of the privilege and of reason, to say that it is to remain in domestic commerce and yet be taken out of Inter-State commerce!

If then it is in domestic commerce (as it surely is under Dispensary Law) it is and must be also sold in Inter-State commerce: and being in Inter-State commerce, it is, like all other articles of Inter-State commerce, a subject of traffic and importation with the inseparable, inherent right of sale in original package as a "constituent part of inter-state commerce," as a "means of its incorporation into the general mass of the property of the State." (Brown vs. Maryland. Leisy vs. Hardin, 135 U. S. Lyng vs. Michigan, 135 U. S. *In Re* Rahrer, 140 U. S.)

This is the position declared by the Supreme Court in *Donald vs. Scott, 165 U. S., 100*, not once but repeatedly, and in

the same terms. It is not only unanswerable as a logical deduction from the legal history of the subject matter and the principle involved, but it is now *decided law* by the Supreme Court, and binding as a fixed legal generalization with its premise and its conclusion :—

"So long, however, as State Legislation continues to recog-"nize wines, &c., as articles of lawful consumption and *com-*"*merce*, so long must continue the duty of the Federal Courts "to afford such use and *commerce* the *same measure* of protec-"tion, under the *Constitution and Laws of the United States, as* "is given to *other articles.*"

Donald vs. Scott, 165 U. S., 91.

That is so long as the State continues it in domestic commerce, so long must the Federal Courts protect it in *inter-state commerce*, under the Constitution and Laws of the United States with the *same measure* of protection as is given to *other articles* in inter-state commerce, *i. e.*, importation with inherent right of sale in original imported packages.

Again this Court say :—

"Whatever else may be said of this Act, it was not intended "to prohibit the manufacture, sale and use of intoxicating "liquors, on the contrary, liquors and wines are recognized "as commodities which may be lawfully made, bought and sold, and *must therefore* be deemed to be the subject of foreign and *inter-state commerce.*"

Donald vs. Scott, 165 U. S., page 93.

If the domestic commerce shop, State Liquor Dispensary, is open, then the inter-state commerce shop (sale in original, imported packages by importer) must also be open.

That is, the State makes these wines and commodities subjects of domestic commerce, and *therefore* they must be subjects of inter-state commerce, *i. e.*, importation and sale in imported, original packages.

Again, this Court say: "It (State Dispensary) is not a law pur-"porting to forbid importation, manufacture, sale and use of

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" intoxicating liquor as articles detrimental to the health,
" morals and welfare of its inhabitants, and *hence* it is not
" within the scope of the Act of Congress of August, 1890."
(Wilson Act.)

They are "articles whose manufacture and use are not for-
" bidden and are therefore the subjects of legitimate com-
" merce."

Donald v. Scott, 165 U. S. 100.

That is, again, by State Dispensary system, wines, etc., are in lawful *domestic* commerce, and hence not within the scope of the Wilson Act, and therefore the subjects of legitimate inter-state commerce.

To repeat the principle the Supreme Court say, you have not taken it out of domestic commerce and you will not be heard to say that it is not a lawful article of inter-state and Federal commerce. On such a state of facts, the Supreme Court say. "The Wilson Act does not apply. This case is not
" within its scope and operation. The Federal privilege still
" inheres in the original, imported package by sale to become
" a part of the property of the State where same goods are
" manufactured and sold." Or in final words of the Court in this particular phase of the question. (*Donald v. Scott, 165 U. S. p. 100.*)

"The State cannot, under the Congressional legislation re-
" ferred to (Wilson Act) establish a system which in effect dis-
" criminates between *inter-state* and *domestic* commerce in com-
" modities to make and use which are admitted to be lawful."
p. 100.

That is, the State cannot say "this is lawful domestic commerce" without also saying there is lawful inter-state commerce in the same article. That is, the functionaries of the State cannot import and sell the imported, original packages, thereby affirming as existing within the State a right of sale, a wholly Federal right inhering in the *original imported package* as such

in Federal commerce, and deny to the citizen producer of another State the same right of sale of original imported package, which is a Federal right in lawful inter-state commerce, under Constitution of the United States not depending on the power or will of the States to grant or deny.

So that viewed in every aspect the Wilson Act does not operate here, and the wine is both in domestic and Inter-State commerce and a right of sale, inheres in original, imported packages as an inseparable part of Inter-State commerce itself.

It is clear, therefore, that the policy of the Wilson Act of Congress, 1890, as construed by the Supreme Court in *In Re Rahrer* and *Donald vs. Scott*, 165 U. S., 100, was

(1.) To enable a State to enforce its prohibition laws by taking liquor out of inter-state commerce, provided the State took liquor first out of domestic commerce.

(2.) The Act was not, however, intended to be seized upon by the State as a means to enforce an inter-state trade monopoly in its own liquor products and those of some of other States.

(3.) The people of this country in Congress assembled, in deference to the prohibition sentiment wherever it might exist, offered the several States a means whereby they could take liquor out of all commerce, domestic and inter-state They did not, however, mean to turn over to any State the liquor trade, inter-state and domestic, to run it for her exclusive benefit, further her own business, and revenue, and exclude wholly or in part all the States and products and citizens of other States for such inter-state business when lawfully there carried on.

(4.) In other words, the Wilson Act is a shield for the defence of the State, not a sword of offence to injure other States, their citizens and products in discrimination and monopoly, and exclusion of them from participation in a lawful business

of inter-state commerce, (*i. e.* importation and sale in original, imported packages,) in which they are equally entitled to share, if the inter-state trade is carried on at all.

THE SECOND PROPOSITION, INDEPENDENTLY URGED, IS THAT ALSO BY SCOTT VS. DONALD, 165 U. S., 100, THE ALTERNATIVE OF PROHIBITION, CAREFULLY STATED BY THE COURT AS A MEASURE OF EQUALITY THAT WOULD MEET REQUIREMENTS OF A VALID EXERCISE OF THE POLICE POWER, WAS:

"PROVISION FOR EQUAL REGULATION FOR INSPECTION AND SALE OF ALL DOMESTIC AND IMPORTED LIQUOR," DONALD VS. SCOTT, PAGE 100; AND THAT THIS DISPENSARY LAW OF 1896 AND 1897 IS NOT SUCH A LAW, MAKES NO SUCH PROVISION, BUT DISCRIMINATES AGAINST COMPLAINANT'S WINES IN DENYING THEM ANY INSPECTION OR SALE WITHIN THE STATE.

In Donald v. Scott, 165 U. S., 100. The Supreme Court say of the Wilson Bill :

"That law was not intended to confer upon any State the power to discriminate *injuriously* against the products of other States."

Donald v. Scott, 165 U. S., p. 100.

And the Court say: "The question whether a given State "law is a *lawful* exercise of the *police power* is still open and must remain open to this Court." Idem. 100.

And the Court states the *alternative* which the State of South Carolina and every State must face on this question.

(1.) "Such a law may forbid entirely the manufacture and "sale of intoxicating liquors and be valid." p. 100.

(2.) "Or it may *provide* equal regulations for the *inspection* "and SALE of *all* domestic and *imported* liquors, and be valid." p. 100.

The South Carolina Statute has not done the first and it must do the second, to be a lawful exercise of the *police* power. This second alternative requires:

(1.) That the State actually *provide* for inspection and *sale* of *all* domestic and *imported* liquor.

The State of South Carolina has not made such provision for inspection and sale of "*all*" imported liquor. Inspection and sale are, under the State law now and for seven years have been actually denied Vandercook & Co's *imported liquor*, the wines of California vineyards. fol. 90. Record.

(2.) In addition the State must also provide "equal regulation" for the inspection and *sale* of *all* domestic and *imported* liquor.

The State has not made any regulations at all for *inspection* and *sale* of Vandercook & Co's imported California wines. Her regulation is denial of sale and inspection altogether and regulations therefor. It is a policy therefore of denial and exclusion altogether of *some* imported liquor.

Under the express language of Donald v. Scott, 100 on this very point this law is therefore not a valid "*exercise of the police power*," and is void.

The words are "all imported liquor." Now here are Vandercook's California wines which are some "imported liquors," a part of *all* imported liquors, for which there is no provision for inspection and sale in South Carolina, although there is provision for inspection and sale of domestic liquors both within the State and outside of the State, and inspection and sale only of such imported liquor as the State may choose or not to import.

In this system, therefore, Vandercook & Co.'s wines from California vineyards are excluded, though they are by the express terms of the Supreme Court of the United States entitled to equal provision for "inspection and sale" under equal regulation within the State. This is the very gist of this ques-

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tion. The Attorney General of South Carolina ignores it by qualifying the words "*all* imported liquors" by adding "imported by the Dispensary." This is the vice of his whole argument. This opportunity of inspection and *sale* of *all* imported liquor is the sole means whereby the product of all other States compete with and secure their equality of right and privilege with local products in the market of the State.

DISCRIMINATIONS.

1. It is discrimination to have regulation of inspection and sale of domestic liquor, and *some* imported liquor, when the law requires a system of "inspection and sale of *all* imported and domestic liquor." (Donald vs. Scott, p. 100.) Just in this Vandercook & Co. California wines are excluded, for there is no provision for *inspection and sale* of their imported liquor when there is actually being inspected and sold domestic liquors and *some* imported liquor as State may choose to buy and inspect.

(2.) It is equally a discrimination to discriminate against citizens and products of California in favor of products of Georgia, as to discriminate in favor of the products of South Carolina.

"But the State may, not under the *guise of exerting its police powers or of enacting inspection laws*, make discriminations against the products and industries of some of the States in favor of the products and industries of its own or other States." Brimmer vs. Rebman, 138 U. S. 82.

(3.) By Donald vs. Scott citizens who wish to use foreign wines have a right to the "exercise of their own judgment and taste in the selection of commodities." P. 99, 165 U. S. Is it not a discrimination in *opportunity* against Vandercook & Co. California wines to deny them the right to be offered for sale under inspection in original imported package of wine in South Carolina for "citizens to exercise their judgment and taste in selection of commodities," while the State Dispensary is offering for sale to same citizens its stock of other liquor commodities for "exercise of their taste and judgment."

(4.) Is it not discrimination against Vandercook & Co. vineyards in *facility* to compel South Carolina citizen desiring their wines to incur trouble and cost of purchasing them in California and importing them for his own use (Minnesota vs. Barber, 136 U. S., 323,) while the like goods of same quality the State Dispensary sells him on the soil without any trouble. Is not this putting the California wines of complain ant, Vandercook & Co.'s goods at disadvantage?

(5.) Is it not discrimination in *time* against Vandercook & Co. California wines when they are denied selling, under inspection, their wines imported in original package immediately in present competition with the State, and the consumer is compelled to wait one month before he can get them from California by importation for use.

(6.) Is it not discrimination in *money* against Vandercook & Co., California wines when he is denied the one-fourth freight rate of carload lots of original imported packages consigned to his agent for local consumer generally, while the State enjoys this carload rate in its inter-state business of importation and sale; and he must ship to individual shippers separately at four times the freight. (In this case freight on car is $150, on same packages if separately sent $600.) How can Vandercook & Co. California wines compete fairly with local State wine and other wine sold by State Dispensary?

(7.) It is discrimination for the State in partnership with the city and county as to profits, to monopolize the sale, not only of domestic products, but also *original imported packages*, and take the profits of such inter-state business for the benefit of the treasury and people of the State, cities and counties, and exclude from such business the producers and importer for sale of original imported packages which is the "subject of legitimate *inter-state trade* and *commerce*," (Scott v. Donald, 165 U. S. 100,) and thus prevent the citizens of other States importing their products in original imported packages for sale as a means, under the Constitution, of incorporating their like products and equally pure products into the mass of the property of the State of South Carolina where it is a lawful commodity for use and sale under the law of the State.

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(8.) It is discrimination, again, for a State or any agent of the State, or any grantee or licensee of the State, to usurp and monopolize the privilege of importation for sale in original package always a right of *inter-state commerce*, in a lawful article of commerce, to the exclusion of the citizens of other States who are *citizens of the United States* in whom the right of inter-state commerce inheres as a Federal right under the Constitution of the United States.

(9.) It is the essence of discrimination to say to the California wine producer that the consumer in the State of South Carolina must go three thousand miles and buy only on the soil of California his wine, and deny the same producer to sell and to have ready for sale his imported and duly inspected original packages of wines in the State of South Carolina. for sale to the same citizen of South Carolina for his lawful use and consumption, while State monopoly has local wine product not better in quality, and in the same less bulk, always present for sale to the same consumer in the State of South Carolina. Under such a system both the business of the citizens of other States and the products of other States are discriminated against. (See Barber vs. Minnesota, 136 U. S., and Brimmer vs. Rebman, 136 U. S.)

In *Donald v. Scott* the police power was unsuccessfully invoked by South Carolina to defend the denial of importation for *use* on the ground that it was within the police power of the State to regulate, or even prohibit, the *use* of liquor, so the police power is even now invoked to defend the denial of importation for *sale*, on the ground that the State can prohibit or regulate sale, but the answer to both is apparent that although the State can regulate and prohibit the *use* of liquor, it cannot regulate it in discrimination ; and although the State can regulate and prohibit the *sale* of liquor, still it cannot regulate and prohibit the sale of such original imported packages in discriminations operating injuriously to products or business of other States, and it cannot regulate inter-state commerce in a lawful article of inter-state commerce.

"There is no difference in effect between a power to prohibit "the *sale* of an article and a power to prohibit its introduction "into the country."

Brown vs. Maryland, 12 Wheat., 439.

(10.) The same discrimination in principle that exists in denial of importation for *use* exists in denial of the importation for *sale*, because the importation for sale is one of the means of importation for use in commerce between the States. Indeed importation for sale is the usual, and almost universal means whereby the consumer in another State enjoys thereafter, after its sale in original package, the *use* of the foreign product. To prohibit it in discrimination is to prohibit and affect by discrimination the eventual *use* of foreign product.

Brown vs. Maryland, 12 Wheat., 439.

The importation for sale is the usual means in inter-state and foreign commerce whereby the products of other States and foreign countries are incorporated into and become part of the mass of the property of the State, and has always been held where there is lawful inter-state *commerce*, that sale is an inseparable part of importation. (See Brown vs. Maryland, *Supra*, 12 Wheaton, 439.)

(11.) It is discrimination to forbid the importation for sale by the complainant producer in California when the State is itself giving its local product *free sale* to all consumers within the State.

(12.) It is discrimination against foreign products when the local product is being sold in packages from one-half pint to five gallons, to prevent the imported original package from being sold as such by importer, such a system discriminates between *domestic* commerce shop and *inter-state commerce* shop.

(13.) It is discrimination against the business and trade of a citizen of another State to deny his sale of his goods in original imported packages, that is, incorporation of his goods into the mass of the property of the State of South Carolina, when the State is herself selling the products of her own State through her agents.

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(14.) It is discrimination against the *use* of the products of California when the State forbids an importation for *sale* of the products of Vandercook & Co., California vineyards, for the *use* of the citizens of South Carolina, while she is *selling* within her limits her own products for the *use* of the citizens of South Carolina.

(15.) It is discrimination against the products of other States when the State of South Carolina provides for *inspection and sale*, within the State of South Carolina, of wine products of South Carolina for the use of the citizens of South Carolina and does not provide for the inspection and sale, within the State of South Carolina, of all the wine products of all other States choosing to come to it for such inspection and sale.

(16.) It is discrimination against the products of other States when the State gives to a Board of Control the right to conduct, in their discretion, the business of importing for sale and selling intoxicating liquor as *they choose*, in exercise of "their taste and judgment," in the State of South Carolina, and not providing for the sale (under like inspection) of goods of other States, in original imported package of equal quality, that *choose to come* to South Carolina for sale.

(17.) It is discrimination for the State of South Carolina, in *selling* to her own citizens in broken and unbroken packages, for use, the products of her State and such products of other States as she may choose, or not, to import, and forbid the sale of all other products of other States for the *same use* by her citizens, and to deny inspection and sale of all such other products to her citizens by the importer for sale of such products in original unbroken packages, by which means alone such other products can enter the market of the State and become incorporated in the mass of property therein in the course of trade for the use of the consumer within the State.

(18.) It is discrimination against the business of citizens, producers of other States, for the State of South Carolina, by her

agents, to sell her own products in broken and unbroken packages, and some products of other States in imported original, unbroken packages, and derive profits from such sale and business, and deny the citizens of other States to sell their products in imported original unbroken packages, and thus deny them a share in the *inter-state commerce* business of importing and selling such imported original, unbroken packages.

(19.) It is discrimination on the part of the State when, by *Scott and Donald*. importers are entitled to " provisions of equal regulations for *inspection* and *sale* of *all imported* and domestic liquors," to allow no inspection and sale to the importer for sale of the wine products of California, and to engage herself inspection and sale of wine products of the State of South Carolina.

(20.) It is discrimination against the California products of complainant to allow the products of South Carolina to be sold by the State, and not allow the complainant to bring consigned to his agent in carload lots at *one-fourth* the freight rate that single packages cost, and deliver to their customers here, their wines receiving therefor here the price of their liquors of the same quality as the domestic liquor sold by the State to her citizens.

(21.) This discrimination is so clear and so crushing in its operation that if every other State in the Union should pass a State liquor dispensary law like that of South Carolina and thereby keep out the wine products of the plaintiff's California vineyard, while getting their liquor supplies from their own State or such imported liquor as they choose or not to import from other States, the whole business of California, as the wine producing State in this Union, would be crushed out and the industries, fortunes and investments of her people, now protected under the Constitution of the United States by the right of free trade in her wines when a lawful article of commerce (as they are here,) would perish, But this disastrous discrimination, under the operation of a universal State liquor dispensary law, enacted by all States except California, would be

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void because the Supreme Court of the United States has declared that *under the dispensary system* the duty of the Federal Court is to protect wine "like any other article," and that inasmuch as it is lawfully manufactured, bartered and sold within the State of South Carolina, it is a "legitimate subject of *Inter-State commerce*," that "it is not within the scope of the Wilson Act," and that it is a subject of barter, sale and exchange as a lawful commodity between the citizens of the States.

This discrimination against the products of other States existing, it is a violation of Federal law and therefore makes the present State system void, and it is immaterial what agency is employed or what system is employed to effect the discrimination and destroy the right of citizens and products of other States Whether it be the grantee or licensee of the State, or the sole monopolist under State sanction, or the State herself, each and all under any and all systems, that operate in discrimination, are powerless to destroy the Federal Constitution and the right of the citizens of the United States thereunder, and all such laws are null and void.

The decision of Donald v. Scott, 165 U. S., 99 is based on this very doctrine. It refers to the "State functionaries" and holds void their exclusive right to determine by their "taste and judgment" the liquor for local consumption, declaring that citizens cannot be deprived of *their own* "taste and judgment in the selection of lawful commodities," p. 99. That is, the monopoly of the State so operating is unconstitutional. This is the very marrow of that opinion.

THE LIMIT OF THE POLICE POWER.

The Supreme Court has stated the scope of police power in *domestic* commerce:

"There are few sources of crime and misery to society equal to the *dram shop*,, where intoxicating liquors, in small quantities, to be drunk at the time, are sold indiscriminately to all parties applying. The statistics of every State show a greater

amount of crime and misery attributable to the use of ardent spirits obtained at these *retail liquor saloons* than to any other source. The sale of such liquors *in this way* has, therefore, been at all times, by the Courts of every State, considered as the proper subject of Legislative regulation. Not only may a license be exacted from the keeper of the saloon before a glass of his liquors can be thus disposed of, but restrictions may be imposed as to the class of persons to whom the liquor may be sold, and the hours of the day and the days of the week on which the saloons may be opened. Their sale in *that form* may be absolutely prohibited. It is a question of public expediency and public morality, and not of Federal law. The *police power* of the State is fully competent to regulate the business—to mitigate its evils, or to *suppress it entirely*. There is no inherent right in a citizen to *thus sell* intoxicating liquors *by retail;* it is not a privilege of a citizen of the State or of the United States."

Crowley vs. Christensen, 137 U. S., 91.

We ask the Court to note that this does not touch the inter-state *sale* of California wine in unbroken original imported package, which is no more harmful than importation of same package for use, or buying same package or less quantity from State Dispensary.

But it is the privilege of citizen of United States, importer for sale, to sell the *imported unbroken* package, if liquor is a lawful article. The State of South Carolina has abolished the saloon in exercise of *police power*, but has *not* gone further; but the State is selling not only broken packages, one-half pint to five gallons, but also the identical imported original *unbroken packages*, as a part of her public policy, that Vandercook & Co. claim the right to sell, the "*unbroken imported package*" of their California wines, for "lawful use and consumption within this State."

It is an exercise of the police power to say:

(1.) Liquor shall be inspected.

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(2.) Liquor shall not be sold except between certain hours, or on certain days.

(3.) Packages of liquor shall not be opened or drunk on the premises where sold.

(4.) Shall not be sold to drunkards or minors.

(5.) Liquor should not be sold in certain cities or towns.

None of these discriminate against the wine product of other States, and are equal as to the operation on both.

All of these police regulations the Circuit Court has declared binding on Vandercook & Co., in sale of their California wine in original imported packages. (See Final Decree.)

(6.) But it is *not* an exercise of the *police power* to exclude altogether from importation and sale in the State, under the *equal police regulations*, the original imported packages of wines of California, when State agents are selling her own products and such as she chooses of other States under same regulations.

It is not an exercise of the police power to exclude from inspection and sale under these equal regulations any original imported package of wine of any producer desiring to sell his product in South Carolina. We do not object to the regulation operating equally, but do object to the denial of *sale* altogether for our California wine products under the same regulations, under which there is being sold by the State the local products and some imported products.

If the State system had allowed Vandercook & Co. to put and keep upon the State market for sale their wine products in original imported packages, or in any other way give Vandercook & Co. an opportunity to put and keep their products for sale in this State alongside of, and in competition with the wines actually sold in the State we could not complain, but it is gross discrimination to deny altogether importation and sale and the opportunity of having citizens of South Carolina buy within the State, California wine products in original imported pack-

ages, when in the State the same citizen is actually buying from the State similar local wine products of no better merchantable quality, in both broken and unbroken packages, from one half pint to five gallons.

Under the *operation* of this Dispensary system, South Carolina, while selling millions of gallons of local liquor product a year, can forever deny the sale of any California wine products within this State!

Under the *operation* of this Dispensary system all other States of the Union in enacting a like liquor Dispensary law could exclude California wine from sale within their borders, while they were selling their own liquor products and products of such other States they may choose or *not* to import, and thus literally destroy California and its wine industries. This is the natural *operation* of the Dispensary law, and its destruction of *inter-state commerce* in an article to make, use and sell which it is admitted to be lawful. And it is to its operation and effect that the Court looks to determine whether it is an exercise of the police power. And when it operates in discrimination or injuriously against other States, its citizens or products, its is void. Donald vs. Scott. 165 U. S. 100.

The State Cannot represent citizens of other States and monopolize Inter-State Trade in any Lawful Article of Commerce.

His Honor, Circuit Judge Simonton, in his last utterance set forth this discrimination by necessary operation of the law very clearly in *Ex parte Snyder, 74 F. R. 859.* Speaking of the Act of March 6, 1896, which is the same to day as to importations *for sale*, he says:

"The Act now in question secures in the State Board of Control a monopoly in the *import and sale* of intoxicating

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liquors, however chemically pure they may be. The Constitution of the United States secures to the citizens of every one of the United States privileges enjoyed in every other State They cannot be *discriminated* against by State legislation. To them commerce between the States must be free. All legislation, therefore, putting *citizens of other States* at a disadvantage in any State, because they are citizens of other States, is void. Any *local regulation* which, *in terms or by its necessary operation denies equality in the markets of the States, is, when applied to the people and products or industries of other States, a direct burden upon commerce among States, and therefore void.* Brimmer vs. Rebman, 138 U. S. 82, 11 Sup. Ct. 213. Nor can it *in principle* make any difference if this equality is denied to citizens of other States because the State herself, through certain agents, engages in the competing business, and asserts her monopoly in it. She may forbid the business altogether, or she may forbid her citizens from carrying it on except upon conditions and restrictions, however stringent. No citizen of any other State can claim greater privileges than her own citizens. But when *she herself* conducts the business, through her agents all over the State, and *takes the place of her citizens*, she cannot, by thus coming into competition with citizens of other States, destroy their competition by denying them the *right to trade* in the same commodity in every respect like that in which she is trading, save that it is not protected by a certificate which she alone can give, and which she distinctly withholds."

"The present Act gives to certain persons (the Board of Control) the sole power of purchasing and importing into this State an article recognized everywhere as an article of *commerce*. The monopoly is vested in them by provisions of such stringency secured by such extraordinary sanctions, that every other person and *all citizens of other States* are absolutely deprived of *competition* with them. Thus the *products as well as the citizens of other States* are *discriminated* against, and the inter-state commerce is destroyed. The Act in question is in conflict with the Constitution and laws of the United States."

Ex parte Snyder, 74 R., 863, 864.

The State of South Carolina may in *domestic commerce* take the *place of her own citizens*, but she does not and cannot represent producers, the *citizens of other States*, whose inter-state commerce rights and products are discriminated against here,

The State is as a "private citizen" in inter-state trade, and must in inter-state trade meet and compete with private citizens of other States as *citizens of the United States*.

"It is, we think, a sound principle, that when a government becomes a partner in any *trading* company, it divests itself, so far as concerns the transactions of that company, of its *sovereign character*, and takes that of a *private citizen*. Instead of communicating to the company its privileges and its prerogatives, it *descends to a level* with those with whom it associates itself, and takes the character which *belongs to its associates*, and to the *business* which is to be transacted."

U. S. Bank v. Planters' Bank, 9 Wheaton, 907.

Therefore there is no sovereignty about this trade, and the State is like a *private citizen* in the trade—running a monopoly under State laws. It has descended to the level of associates and *business* it transacts is the inter-state *liquor trade*.

"The relation of *sovereign* and *trader* is inconsistent."

Adam Smith, *Wealth of Nations*, 3 Vol. 357.

Mr. Webster, in Gibbons vs. Ogden, 9 Wheaton, 24, in showing that the exclusive grant by New York State to Livingston of the steam navigation was void as a regulation of commerce, said also: "But this is not all. It requires no greater power, to grant a monopoly of *trade*, than a monopoly of navigation." Page 24.

"The people of New York have a right to be protected against this monopoly. It is one of the objects for which they agreed to this Constitution, that they would stand on an equality in commercial regulations; and if the government should not insure them that, the promises made to them, in its behalf, would not be performed," P. 25.

And in this case, in deciding that the State could not create a monopoly of navigation, which is a *part of commerce*, decided also that the State could not create or maintain a monopoly of any other part of inter-state *commerce*."

Gibbons vs. Ogen, 9 Wheat., 24.

If *inter-state commerce* exists at all it must be shared by the State as a "private citizen," with citizens of other States in whom it inheres as *citizens of the United States* and secured to them equally under the Constitution of the United States.

Inspection Law

The inspection feature of the Dispensary Law of 1896 and March 5, 1897, Sec. 1, is null and void on each of the following grounds:

(1.) Because of Sec. 1, of the Act, 1897, the positive test is "alcoholic purity" upon analysis by State chemist, which test in terms was held by the Supreme Court of the United States to be unreasonable and void.

Donald vs. Scott, 165 U. S., 100.

By Section 1, "all alcoholic liquor must be pure and must be free from (that is must not have) anything poisonous, deleterious, &c. When found to be free from poisonous matter, &c., *i. e.*, complying with negative test, it must also conform to the sole positive test, "alcoholic purity," (whatever that may mean,) condemned by Supreme Court in terms as unreasonable.

(2,) Because no certain known crucial test is prescribed, but same is left to discretion of chemist. There is nothing definite which a wine producer can surely comply with. Nothing either positive or negative as to ingredients or composition.

The standard which an inspection law requires must be one which the producer can reasonably conform to; 136 U. S., 328. When a *chemist* is to *analyze*, the producer should know what by law the chemist must or must not find in the wine, beer or spirits to make it merchantable. His arbitrary dictum, shifting discretion or unknown standard might be oppression.

(3.) Because it operates extra territorially upon persons and property outside of the jurisdiction of the State, in requiring a certificate to be attached by *consignor* in another State to the wine package in another State, as a condition of right of importation by residents in this State. This also a burden on inter-state commerce. Of such a State Certificate, this Court said:

"It is not an exercise of the jurisdiction of the State over "persons and property within its limits. On the contrary, it "is an attempt to exert that jurisdiction over persons and "property within the limits of other States."

125 U. S., 498. (Bowman vs. Chicago.)

"But such extra territorial powers cannot be assumed upon "such an application. On the contrary, the nature of the case "contradicts their existence. For if they belong to one State "they belong to all, and cannot be exercised severally and "independently."

125 U. S., 499. (Idem.)

Again, by the Wilson Act, August, 1890, it is only "on arrival" that intoxicating liquor become subject to an inspection law, as part of police power of the State. The Dispensary Law of South Carolina would attempt to subject liquor to inspection while in another State, and beyond its jurisdiction.

(4.) Because it confiscates the wine arriving in this State, without a certificate, even if on local inspection after arrival it is found pure. It is, therefore, not inspection securing to the citizen the due quality of his goods and passing them if found pure in this State.

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The imported package without certificate by Section 31, is seized, tested actually by the State Chemist, and if pure furnished through the State Dispensary. Found pure under local inspection it should be passed to the owner as lawful merchandise.

Bowman vs. Chicago, 125 U. S., 488–489.

(5.) Because it is an unusual, unprecedented inspection system, against the known laws and customs of inter-state trade and commerce, and therefore "*unreasonable*" and void. It is the only article of commerce so treated by this State or any other State or country at any time in the history of the world. Thus it appears it was solely to burden inter-state commerce and delay the consumer, in aid of the business and revenue and discriminating policy of State Dispensary.

(6.) Because it requires a new chemical analysis of sample every time a purchaser orders for importation the same wine from the same producer. This is mere vexation and unnecessary delay, accomplishes no purpose but obstruction. Especially when the sample is not officially taken from the actual package, which is never inspected officially by the South Carolina Law.

(7.) Because it is unreasonable in the time lost in sending a sample from producer to State Chemist and back, when in inter-state commerce the right of importer is to have the imported packages move immediately to him without obstruction for local inspection within the State "on arrival." The real object is seen in its effect in forcing purchasers of wine to buy of State Dispensary rather than wait indefinitely. This is simply ingenious obstruction of inter-state commerce. No such time is lost in ordinary methods of local inspection "on arrival" within the State, when inspection laws operate by Wilson Act, (August, 1890.)

(8.) Because with all its elaborateness and delay this inspection does not ensure *due quality* to the citizen consumer for the test is by sample not taken from the actual package officially and leaves the foreign producer free to ship a package of another

quality. In labored effort it furnishes no security but it leaves the door wide open for fraud and imposition by non-resident producer, and this is true of all dispensary liquors also, which are by sample test sent in advance, and not taken from actual package by officials.

It does not conform therefore to the spirit or purpose of an inspection law. It is only a mere sham, a blind to raise revenue, and discriminate.

Bowman v. Chicago R. R., 125 U. S., 488-489.

(9.) The inspection law is moreover void as to importer *for sale* in original packages, because it denies him an opportunity of inspection of such packages altogether.

Section 1, Act 1896 and 1897 confines inspection to importer for his *own use* and no provision is made in the statute for inspection of importations of original packages for sale by foreign producer.

The Supreme Court said in such case "that a mode of inspection to which *citizens of other States* having oils which they desired to *sell* in Kentucky *market*, could not have reasonably conformed, it would undoubtedly have been held to be an unauthorized burden upon Inter-State *Commerce*."

Minn. v. Barber, 136 U. S., 328.

Here there is complete denial of inspection, and the imported California wines are even confiscated, when the duty of the State was to have afforded an inspection system to which complainant could conform.

RELIEF GRANTED IN THIS CASE.

The relief granted is by the protection of original imported packages of the California wines of Vandercook & Co., against this discrimination, *i. e.* to enjoin their seizure, &c., allow their sale and opportunity of sale in the State in the same way as if the provision now existing for inspection and sale had been by law extended also to their wines, *i e.*, to be allowed to sell in

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original imported packages under any valid inspection law as to quality the State might exact, also in such sale to conform to all police regulations applying without discrimination to all sales, *i. e.* to sell within the lawful hours of sale; to sell in the unbroken imported package, not to be opened or drunk on the premises; and not to be sold to drunkards or minors, and only in those cities or towns when by law intoxicating liquor is sold as a beverage.

We ask to be relieved of nothing that is a lawful exercise of the police power of the State, we only ask to be relieved of the the discrimination and wrong of failure of provision for and denial of opportunity of *any sale at all* within the State, when there is actually being sold in the State local liquor and *some* imported liquor.

We ask also the protection of our imported original packages after sale in the hands of the purchaser for lawful use and consumption within this State, to the same extent as the importer for personal use who may have bought same package from us in California, is protected in his lawful possession and lawful use of same, in the language of the injunction in *Scott v. Donald*, 165 U. S. 100, in fact, the same protection and no more that the purchaser of the original imported package of wine from complainant would have, if he bought the same (*e. g.*, a case of imported wine) from the State Dispensary.

PRACTICAL RESULT OF RELIEF GRANTED.

The result of this protection of complainant, California wines from discrimination in no way effects the exercise of the police power of the State, or to hinder and prevent the attainment of any object within the lawful scope of the police power, or the attainment of any object within the provision of the lawful police provisions of the Dispensary Law. It only tends to lessen the profit of the State business, a strictly revenue feature and not within the power of the State to raise, in exercise of *police* power. Brennan v. Titusville, 153 U. S. 289 so as to wines also In Re *Lebolt*, 77, F. R. 587, *590*.

(1.) The quality of the wine is the same under inspection system, and wine by the State law "not being detrimental to the welfare of the State and the health of its inhabitants." Scott v. Donald, 165 U. S. 100, but only its due quality to be ascertained under inspection, all police purposes would be attained in this respect.

(2..) The business would be still restrained by criminal penalties to strict conformity to lawful police provisions for *sale* of liquor.

(3.) The consumer in the State of South Carolina does not get any different wine in qualtity, only an opportunity to exercise on the soil " his own taste and judgment," a right he cannot constitutionally be deprived of. (Scott v. Donald, 165, U. S. 99.) and now exercises in importation for use, at great cost and trouble.

(4.) The local purchaser, from Vandercook wine agency, has no larger right than the importer for use of the same package now has, who has bought the same in California at great cost and trouble, and consumed one month in importing it.

(5.) There is only one difference, and that is in profit of State-business "money making," and this is, as we have seen, not an object within the police power of a State. But this the State must expect when it descends to the level of those who trade especially in inter-state trade and commerce, (9 Wheaton, 907,) in the same way it must expect competition and doubtful result as to profits. if it assumed by officials the drug trade or tobacco trade.

(6.) In short, the only thing changed by the relief afforded by this injunction is remedying the discrimination, this Federal wrong of exclusion, denial of inspection and sale and confiscation of our wines, and putting our wines in original imported packages in the State market for sale, where they have as a California product, an equal *right of sale* under inspection and equal regulation, if any sale of any local or imported wine is had in the market of the State of South Carolina.

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CONCLUSION.

In conclusion we would urge upon the Court to consider the magnitude and far-reaching consequences of the principles here at stake.

The author of this Dispensary Law (Governor Tillman) thus announces the *new* political theory on which it is based:

"The law rests upon the idea that it is the proper thing to supply what the *people want* for their legitimate use."

"*If men will have it (intoxicating liquor) the State should supply it.*"—Message Governor Tillman to General Assembly South Carolina. House Journal 1893, p. 46.

It is not difficult to locate the school of political thought that announces as a new principle in our form of government that *the State should supply what the people want.*

Under this principle the whole business, trade and commerce of the State could be constitutionally turned into a system of official conduct of business, with an army of officers and State agents; and thus, instead of the individual citizen conducting trade with private capital and private enterprise, under the protection and restraints and regulations of the Government; the State would be conducting trade with public funds through official employees. To state this result is to demonstrate the falsity of the principle, for this result is simply Socialism and Paternalism and Communism and destroys the very purposes and trangresses all the bounds of "*civil* government" in the history of the Anglo-Saxon race, and as contemplated by the founders of these American commonwealths.

The character of sovereign and trader is inconsistent.
Adam Smith's Wealth of Nations, 3 Vol. 357.

See particularly *State vs. Beebe, 6 Ind., 501; Rippe vs Becker,* 57 N. W. Rep., 34; Supreme Court, Minn., 1894; Slaughter House Cases, 16 Wall, 61, 62, in which cases it was declared that the police power, as was understood in American Constitutional law, means simply the power of the State to im-

pose those restraints upon private rights which are necessary for the general welfare of all; and the police power of the State to regulate business does not include power to engage in or to carry it on.

And these cases were followed and principles declared by the State of South Carolina, in the cases of *McCullough vs. Brown, 41 S. C. Rep., 220, 1893.* But in a political revolution of South Carolina, af a reconstruction of the Supreme Bench of the State of South Carolina, in the case of the *State vs Aiken, 42 S. C. Rep, 222.* 1894, the Supreme Court of South Carolina reversed the former decision and declared, following the absolute and monarchical system of Continental Europe, that the State, in the exercise of the police power, could usurp and conduct a trade.

All of this new and startling policy for an American State in one aspect concerns the State alone, and is to be measured by her own Constitution and the policy of her own laws.

But in another and broader sense the far reaching consequences of the question and magnitude of the principle at stake does not stop with the State alone. Indeed it affects this whole country, for this is a commercial union as well as a political union of American States, and the bond of commerce is under the Constitution of the United States a practical, substantial and enduring bond of this union. And if the State of South Carolina could lawfully enact and enforce against the citizens and products of other States her existing State liquor Dispensary law, and exclude the pure products of other States and prevent the importation by producer for sale, for the use and consumption of the citizens and residents of South Carolina of such pure beer, ales, wines and liquors, the products of other States and foreign countries, and deny them inspection according to her own test and standard and sale under equal regulation, while the State is herself, through an official monopoly, selling the like products of her own State to all her citizens, then on the same principal the State of South Carolina, or any other State of the United States, could enact a State Dispensary law to

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assume the inter-state trade in any article capable of adulteration in the manufacture, and of abuse in the use, and there would be possible throughout the several States of the United States such institutions as the State liquor Dispensary, State butter Dispensary, State meat Dispensary, State tobacco Dispensary, State oil Dispensary, State flour Dispensary. etc., by which all these and other trades, in short, practically the whole inter-state trade and business of the country, would be monopolized by the State, selling to her own citizens her own products, and such products of other States as she may choose or not to import, or selling none of the products of other States, and excluding from the State all the products of other States of equal merchantable quality, when imported by the producers citizens of other States for sale, and use and consumption of her citizens, although she is selling at the same time to her citizens and her citizens are using as fit for consumption the identical local product of same merchantable standard or quality.

To state this inevitable result is simply to reveal the magnitude of the question here involved, and to show that such a principle generally embodied into law would result in wholesale discrimination and in the commercial anarchy of these States, and destroy the very bond of commercial union of the States of the United States. It is peculiarly the function of this Court to vigilantly guard the constitutional rights, privileges and immunities of the citizens of the United States here invoked by complainant, as an equal sharer in the benefits of this commercial union of all the States, and equally entitled to participate in inter-state commerce in wines, as an article of lawful commerce by the laws of the State of South Carolina.

J. P. K. BRYAN,

Counsel for Appellee, W. A. Vandercook & Co.

NOTE.—This brief is also submitted in No. 515 as argument for defendant in error, W. A. Vandercook & Co., against the constitutionality of the "Dispensary Law" of South Carolina, on the exceptions therein involving the questions herein discussed.

J. P. K. BRYAN,

Counsel for W. A. Vandercook & Co., Defendants in Error.

APPENDIX.

CONTAINING SOUTH CAROLINA DISPENSARY LAW OF MARCH 6, 1896.

(PP. 123-149) Vol. 22, Stat. S. C.

AND

AMENDATORY ACT OF MARCH 5, 1897,

(PP. 535-541) Vol. 22, Stat. S. C.

MARCH 6, 1896.

No. 61.

AN ACT to provide for the Election of the State Board of Control and to Further Regulate the Sale, Use, Consumption, Transportation and Disposition of Intoxicating and Alcoholic Liquors or Liquids in the State and Prescribe Further Penalties for Violation of the Dispensary Laws and to Police the Same. No. 115.

Section 1. Be it enacted by the General Assembly of the State of South Carolina, That the manufacture, sale, barter or exchange, receipt or acceptance, for unlawful use, delivery, storing, and keeping in possession, within this State, of any spirituous, malt, vinous, fermented, brewed (whether lager or rice beer), or other liquor, any compound or mixture thereof, by whatever name called or known, which contains alcohol and is used as a beverage, by any person, firm

The manufacture, sale or keeping of spirituous liquors prohibited, except as provided herein.

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or corporation; the transportation, removal, the taking from the depot or other place by consignee or other person, or the payment of freight or express or other charges by any person, firm, association or corporation upon any spirituous, malt, vinous, fermented, brewed (whether lager, rice or other beer) or other liquor, or any compound or mixture thereof, by whatever name called or known, which contains alcohol and is used as a beverage, except as is hereinafter provided, is hereby prohibited under a penalty of not less than three (3) nor more than twelve (12) months at hard labor in the State Penitentiary or pay a five of not less than one hundred dollars nor more than fiue hundred dollars, or both fine and imprisonment, in the discretion of the Court, for each offense. All such liquors except when bought of a State officer authorized to sell the same, or in possession of one and having beeu duly tested by the Chemist of the South Carolina College and found to be chemically pure, are declared to be contraband and against the morals, good health and safety of the State, and all alcoholic liquors in this State and not having been tested by the Chemist of the South Carolina College and found to be chemically pure are hereby declared to be of a poisonous and detrimental character, and their use and consumption as a beverage are against the morals, good health and safety of the State. and all such liquors may be seized wherever found, without a warrant, and turned over to the State Commissioner.

State Board of Control.

Section 2. A Board consisting of five members, to be known as the State Board of Control, shall be elected by the General Assembly at this session to carry out the provisions of this Act. The terms of office of the Board so elected shall be for one, two, three. four and five years respectively, and those elected shall determine by lot which shall take the respective terms. At the expiration of the term of office of each member his successor shall be elected for a term of five years. They shall receive for their services the same per diem and mileage as members of the General Assembly. The State Board of Control shall devise and inaugurate such a system of bookkeeping and accounting as they may deem advisable, and shall elect a clerk or bookkeeper, who shall hold his office during the pleasure of the Board and shall receive as compensation for his services a salary of fifteen hundred dollars per annum. The

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State Board of Control, under such rules and regulations as may be adopted by said Board, shall purchase all liquors for lawful use in this State, and shall have the same tested and declared to be pure as hereinbefore and hereinafter provided.

Election of Commissioner; his duties, term of office, &c.

Section 3. That the State Board of Control shall, at the expiration of the term of the present Commissioner, and at the expiration of every two years thereafter, appoint a Commissioner, which appointment shall be submitted to the Senate at its next session for its approval; said Commissioner shall be believed by the State Board of Control to be an abstainer from intoxicants, and shall, under such rules and regulations as may be made by the State Board of Control, furnish all intoxicating liquors for lawful use in this State, to such persons as may be designated as Dispensers thereof, to be sold as hereafter prescribed in this Act. Said Commissioner shall reside and have his place of business in the city of Columbia, in this State, and hold his office two years from his appointment and until another be appointed in his stead. He shall be subject to removal for cause by the State Board of Control. He shall qualify and be commissioned the same as other State officers, and shall receive an annual salary of twenty-five hundred dollars, payable from the Dispensary fund upon the warrant of the State Board of Control. He shall be allowed a bookkeeper, who shall be paid in the same manner a salary of twelve hundred dollars, and such other assistants as in the opinion of the Board of Control may be deemed necessary. He shall not furnish to the County Dispensers any intoxicating or fermented liquors except such as have been tested by the Chemist of the South Carolina College and declared to be pure: Provided, That said Board of Control shall have authority to appoint such assistants as they may find necessary to assist the Chemist of the South Carolina College in making the analyses required by this Act; and the said Board of Control may fix such reasonable compensation, if any, as they may deem proper for the services rendered by such Chemist or such assistants. Each County Dispenser shall remit to the State Treasurer all moneys accruing to the State from the sale of liquors under such rules as may be prescribed by the State Board of Control, and the State Treasurer shall keep a separate account with said fund,

County Dispensers to remit to State Treasurer.

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from which the State Board of Control shall draw from time to time upon warrants, or in such manner as they may provide, the amount necessary to pay the expenses incurred in conducting the business. All rules and regulations governing the said Commissioner or County Dispensers in the performance of any of the duties of his office, where the same are not provided for by law, shall be prescribed by the State Board of Control. The State Commissioner shall before entering upon the duties of his office execute a bond to the State Treasurer, with sufficient sureties to be approved in the same manner as the bonds of other State officers, in the penal sum of ten thousand dollars, for the faithful performance of the duties of his office. In all purchases or sales of intoxicating liquors made as contemplated in this Act, the State Board of Control shall cause a certificate to be attached to each and every package containing said liquors when the same is shipped to State Commissioner from the place of purchase, or by State Commissioner to the County Dispensaries, certified by their official signatures and seal, which certificate shall state that liquors contained in said packages have been purchased by the State Board of Control for use within the State of South Carolina, under the laws of said State, and shall also cause to be attached to all such liquors the certificate of the Chemist of the South Carolina College that samples of the same have been tested as required by this Act; and without such certificates any package containing liquors which shall be shipped from place to place within the State, or delivered to the consignee by any railroad, express company or other common carriers, or be found in the possession of any common carrier, shall be regarded as contraband and may be seized without warrant for confiscation, and such common carrier shall be liable to a penalty of five hundred dollars for each offense, to be recovered against said common carrier in any Court of competent jurisdiction by summons and complaint, proceedings to be instituted by the Solicitor of any Circuit with whom evidence may be lodged by any officer or citizen having knowledge or information of the violation; and any person attaching or using such certificates without the authority of the State Board of Control or any counterfeit certificate, for the purpose of securing the transportation of any intoxicating liquors within this

Bond of

Package shipped to have on them certificates.

What said certificates shall contain.

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State, in violation of law, shall, upon conviction thereof, be punished by a fine of not less than five hundred dollars and imprisonment in the Penitentiary for not less than one year for each offense. A. D. 1896.

Section 4. The State Commissioner shall before shipping any liquors to Dispensers, except lager beer, cause the same to be put into packages of not less than one-half pint nor more than five gallons, and securely seal the same, and it shall be unlawful for the Dispenser to break any of such packages or open the same for any reason whatsoever. He shall sell by the package only, and no person shall open the same on the premises: Provided, This Section shall not apply to malt liquors shipped in cases or kegs or bottles thereof shipped in barrels; and such malt liquors may be sold by the County Dispenser in such quantities, of not less than one pint, as he may see proper: Provided, The same shall not be drunk on the premises. Dispensers shall open their places of business and sell only in the day time, under such rules as may be made by the State Board of Control, or by the County Board of Control with approval of the State Board of Control. How liquors must be shipped and sold.

Section 5. It shall be the duty of the State Board of Control to appoint a County Board of Control composed of three persons believed by the said Board not to be addicted to the use of intoxicating liquors. The persons so appointed shall hold their office for a term of two years, and until their successors are appointed, and shall be subject to removal for cause by the State Board of Control. Said County Board of Control shall make such rules as will be conducive to the best management of the sale of intoxicating liquors in their respective Counties: Provided, All such rules shall be submitted to the State Board and approved by them before adoption. The members of the County Board of Control shall qualify and be commissioned as are other County officers without fees therefor. County Board of Control.

Section 6. Applications for positions of County Dispenser shall be by petition, signed and sworn to by the applicant, and filed with the County Board of Control at least twenty days before the meeting at which the application is to be considered, which petition shall state the applicant's name, place of residence, in what business engaged, and in what ...ness he has been engaged two years previous to filing County Dispensers, how appointed.

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petition; that he is a qualified elector of this State and a resident of the County; that he has never been adjudged guilty of violating the law relating to intoxicating liquors, and is not a keeper of a restaurant or place of public amusement, and that he is not addicted to the use of intoxicating liquors as a beverage. The appointment shall be made only on condition that the applicant shall execute to the County Treasurer a bond in the penal sum of three thousand dollars, with good and sufficient sureties, conditioned that he will well and truly obey the laws of the State of South Carolina, now or hereafter in force, in relation to the sale of intoxicating liquors; that he will pay all fines, penalties, damages and costs that may be assessed or recorded against him for violations of such laws during the term for which said appointment is made, and will not sell intoxicating liquors at a price other than that fixed by State Board of Control. Said bond shall be for the use of the State and County or any person or persons who may be damaged or injured by reason of any violation on the part of the obligor of the law relating to intoxicating liquors purchased or sold during the term for which said appointment is made. The said bond shall be deposited with the County Treasurer, and suit thereon shall be brought at any time by the Solicitor or any person for whose benefit the same is given, and in case the conditions thereof, or any of them, shall be violated, the principal and sureties thereon shall also be jointly and severally liable for all civil damages, costs and judgments that may be obtained against the principal in any civil action brought by wife, child, parent, guardian, employer or other person under the provision of the law. All other moneys collected for breaches of such bond shall be distributed as other funds arising from the Dispensary. Said bond shall be approved as other official bonds for the County.

County Dispensaries, how located.

Section 7. There may be one or more County Dispensers appointed for each County, the place of business of each of whom shall be designated by the County Board, but the State Board of Control must give consent before more than one Dispenser can be appointed in any County; and when the County Board designates a locality for a Dispensary twenty days' public notice of which shall be given, it shall be competent for a majority of the voters of the township

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in which such Dispensary is to be located, to prevent its location in such township by signing a petition or petitions, addressed to the County Board, requesting that no Dispensary be established in that township. The County Board may in its discretion locate a Dispensary elsewhere than in an incorporated town in the Counties of Beaufort and Horry, and no others, except such as are authorized by special Act of the General Assembly: Provided, however, That any County, town or city wherein the sale of alcoholic liquors was prohibited by law prior to July 1, 1893, may secure the establishment of a Dispensary within its borders in the following manner: Upon petition signed by one-fourth of the qualified voters of such County, town or city wishing a Dispensary therein being filed with the County Supervisor or Town or City Council, respectively, they shall order an election submitting the question of Dispensary or no Dispensary to the qualified voters of such County, town or city, which election shall be conducted as other special elections; and if a majority of the ballots cast be found and declared to be for a Dispensary, then a Dispensary may be established in said County, town or city: Provided, That Dispensaries may be established in the Counties of Williamsburg, Pickens and Marion and at Seneca and other towns now incorporated in Oconee County without such election or compliance with the other requirements of this Act: Provided, That nothing in this Act contained shall be so construed as to prohibit persons resident in Counties which shall elect to have no Dispensary from procuring liquors from Dispensaries in other Counties, or County Dispensers from shipping same to their places of residence under proper labels or certificates: Provided, further, That nothing in this Act shall be construed to repeal an Act entitled "An Act to allow the opening of Dispensaries in Pickens and Oconee Counties," approved December 18th, 1894. A. D. 1896.

Section 8. If the application for the position of Dispenser be granted, the appointment shall not be made until the applicant shall make and subscribe an oath, before some officer authorized by law to administer oaths, which shall be endorsed upon the bond, to the effect and tenor following: "I, ————, do solemnly swear (or affirm) that I will well and truly perform all and singular the condition of the within bond, and keep and perform the trusts con- Oath of Dispensers; permits, &c.

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fided to me to purchase, keep and sell intoxicating liquors. I will not sell, give or furnish to any person any intoxicating liquors otherwise than is provided by law, and, especially, I will not sell or furnish intoxicating liquors to any minor, intoxicated person or persons who are in the habit of becoming intoxicated, and I will make true, full and accurate returns to the County Board of Control on the first Monday of each month of all certificates and requests made to or received by me, as required by law, during the preceding month; and such returns shall show every sale and delivery of such liquors made by me or for me during the month embraced therein, and the true signature to every request received and granted; and such returns shall show all the liquors sold or delivered to any and every person as returned." Upon taking said oath and the oath required by the Constitution, and filing bond as hereinbefore provided, the County Board of Control shall authorize him to keep and sell intoxicating liquors as in this Act provided, and every appointment so made shall specify the building, giving the street and number or location, in which intoxicating liquors may be sold by virtue of the same, and the length of time in which the same shall be in force, which in no case shall exceed twelve months. Appointments made under this Act shall be deemed trusts reposed in the recipients thereof, not as a matter of right, but of confidence, and may be revoked upon sufficient showing by order of the County Board of Control; and upon the removal of any County Dispenser, or upon demand of the County Board of Control he shall immediately turn over to the County Board of Control all liquors and other property in his possession belonging to the State or County. Said County Board of Control shall be charged with the duty of prosecuting the County Dispenser or any of his employees who may violate any of the provisions of this Act. On the death, resignation or removal of a County Dispenser, or expiration of his term of office, the County Board shall appoint his successor.

Office and Clerk of County Boards; books and records; profits; compensation, &c.

Section 9. The County Board of Control shall use as their office the office of the County Supervisor of their County and shall elect one of their number as Chairman and clerk of the said County Board of Control. The County Board shall preserve as a part of the records and files of their office all petitions, bonds and other papers pertaining

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to the appointment of Dispensers and keep suitable books in which bonds shall be recorded. The books shall be furnished by the County like other public records. The County Board of Control shall designate or provide a suitable place in which to sell the liquors. The members of the County Board of Control shall meet once a month or oftener, on the call of the Chairman, and each member of the Board shall receive a per diem of two dollars and five cents mileage each way, but they shall not receive compensation for more than thirty days in any one year, except in the County of Charleston, where they shall not receive compensation for more than sixty days in any one year, and in Barnwell County not more than fifty days in any one year. They shall, upon the approval of the State Board of Control, employ such assistants for the County Dispenser as may be necessary. The Dispenser and his assistants shall receive such compensation as the State Board of Control may determine. All profits, after paying all expenses of the County Dispensary, shall be paid, one-half to the County Treasurer and one-half to municipal corporation in which it may be located, such settlements to be made quarterly: Provided, That if the authorities of any town or city, in the judgment of the State Board of Control, do not enforce this law, the State Board may withhold the part going to the said town or city and use it to pay State Constables or else turn it into the County treasury. All moneys received by the County Dispenser belonging to the State shall be forwarded on Monday of each week to the State Treasurer, and at the same time the County Dispenser shall forward to the State Board of Control a duplicate statement of the remittance so made to the State Treasurer. On the same day of each week the County Dispenser shall deposit with the County Treasurer the portion of all the moneys received by him belonging to the County and to the municipal authorities in which the Dispensary is located. The County Treasurer shall give his receipt therefor, and hold the same until the quarterly settlement hereinbefore provided for is had. The quarterly settlements herein provided for shall be made on the fourth Monday in the months of March, June, September and December in each year. Such settlements shall be made in the presence of the County Auditor, who shall make a memorandum of the items thereof and

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forward the same to the State Board of Control. The Mayor or Intendant of the city or town in which the Dispensary is located may also attend such settlement: Provided, That in Counties where Dispensaries are established in other than incorporated cities or towns the County shall get all profits that would otherwise go to such cities and towns: Provided, That in the County of Barnwell the clerk of the Board of County Commissioners shall be the clerk of the Board of Control.

Requests for liquor, how made, and to whom refused.

Section 10. Before selling or delivering any intoxicating liquors to any person a request must be presented to the County Dispenser, printed or written in ink, dated of the true date, stating that he or she is of age and the residence of the signer, for whom or whose use it is required, the quantity and kind required and his or her true name; and the request shall be signed by the applicant in his own true name and signature, attested by the County Dispenser or his clerk who receives and files the requests. But the requests shall be refused if the County Dispenser filling it personally knows the person applying is a minor, that he is intoxicated, or that he is in the habit of using intoxicating liquors to an excess; or if the applicant is not so personally known to said County Dispenser, before filling said order or delivering said liquor he shall require the statement of a reliable and trustworthy person of good character and habits, known personally to him, that the applicant is not a minor and is not in the habit of using intoxicating liquors to excess.

Requests for liquor to be made on blanks furnished, &c.

Section 11. Requests for purchase of liquor shall be made upon blanks furnished by the County Auditor, in packages of one hundred each, to the County Dispenser, from time to time as the same shall be needed, and shall be numbered consecutively by the Auditor. The blanks aforesaid shall be furnished to the County Auditor by the State Board of Control, in uniform books like bank checks, and the date of delivery shall be endorsed by the County Auditor on each book and receipt taken therefor and preserved in his office. The Dispenser shall preserve the application in the original form consecutively by the Auditor. When return thereof is made the County Auditor shall endorse thereon the date of return, and file and preserve the same, to be

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used in the quarterly settlements between such Dispenser and the County Treasurer. All unused or mutilated blanks shall be returned or accounted for before other blanks are issued to such County Dispenser, A. D. 1896.

Returns by Dispenser, &c.

Section 12. On or before the tenth day of each month each Dispenser shall make full returns to the County Auditors of all requests filled by him and his clerks during preceding month, upon blanks to be furnished by the State Board of Control for that purpose, and accompany the same with an oath, duly taken and subscribed before the County Auditor or a Notary Public, which shall be in the following form, to wit: I, ————————, being duly sworn, state on oath that the request for liquors herewith returned are all that were received and filled at my place of business under my permit during the month of ————————, 189—; that I have carefully preserved the same, and that they were filled up, signed and attested at the date shown thereon, as provided by law; that said requests were filled by delivering the quantity and kind of liquors required, and that no liquors have been sold or dispensed under my permit during said month except as shown by the request herewith returned; and that I have faithfully observed and complied with the provisions of my bond and oath taken by me, thereon endorsed, and with all the laws relating to my duties in the premises.

Enforcement of returns in case of failure.

Section 13. Upon failure of any Dispenser to make returns to the Auditor as herein required, it shall be the duty of said Auditor to report such failure to the State Board of Control, and the said State Board of Control shall immediately order the County Board to summon said delinquent Dispenser to appear before them and show cause why his appointment should not be revoked; and if cause shall not be shown to the satisfaction of the County Board of Control, they shall immediately annul said appointment and give public notice thereof; and the Circuit Solicitor shall proceed to enforce the penalties prescribed in this Act for such violation against said County Dispenser at the next succeeding term of Court in the County in which such appointment is held; and any Dispenser who shall sell or dispose of any intoxicating liquors after his appointment shall have been revoked shall, upon conviction thereof, be fined not less than five hundred (500) dollars and be imprisoned

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Penalty for illegal purchase, &c.

for six months. If any Dispenser or his clerk shall procure any intoxicating liquors from any other person except the State Commissioner, or if he, or they, or any person or persons in his or their employ, or by his or their direction, shall sell or offer for sale any liquors other than such as have been furnished by the State Commissioner, or shall adulterate, or cause to be adulterated, any intoxicating spirituous or malt liquors which he or they may keep for sale under this Act, by mixing with some coloring matter or any drug or ingredient whatever, or shall mix the same with other liquors of different kind or quality, or with water, or shall sell or expose for sale such liquors so adulterated, knowing it to be such, or shall change the label upon any box, bottle or package, he or they shall be guilty of a misdemeanor and be fined in a sum of not less than two hundred dollars or imprisoned for not less than six months. If any County Dispenser shall misappropriate, misuse or otherwise wrongfully dispose of any moneys or other property belonging to the State, County or municipality, he shall upon conviction be punished as in case of breach of trust with fraudulent intent.

Dispensers violating the law liable to damages.

Section 14. That any County Dispenser who, in violation of his oath of office, sells or furnishes intoxicating liquors to any minor, intoxicated person, or person who is in the habit of becoming intoxicated, or fails to make full and accurate returns as required by law, showing the true signature to every request for liquor by him received and granted, or sells liquors to any person without first requiring the written requests therefor to be filled out and signed as provided by law or the regulations of the State Board of Control, that on such information given by any person, with sufficient evidence, it shall be the duty of the Solicitor to bring suit in the name of the County for two hundred dollars' damages on the bond of the said County Dispenser against the principal and sureties of said bond for each of such violations, for which said principal and sureties shall be liable, jointly and severally, together with all cost and judgments pertaining to the suit. And on judgments given against him the said County Dispenser shall be immediately deprived of his office as Dispenser, and his principal and sureties aforesaid shall remain further liable, jointly and severally, to the extent of their bond, to all civil damag

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costs and judgments which may be obtained against the principal in any civil action brought by wife, child, parent, guardian, employee, or other person, under the provisions of the law: Provided, That if the said County Dispenser can show to the satisfaction of a jury by way of defense that the said intoxicating liquor was obtained from him by the infant, intoxicated person, or person in the habit of becoming intoxicated, by fraudulent and deceitful representations, the person making such fraudulent and deceitful representation, shall be guilty of a misdemeanor, and be fined in a sum of not less than two hundred dollars or imprisonment for not less than six months. A. D. 1896.

Section 15. No person, firm, association or corporation shall manufacture for sale, or keep for sale, exchange, barter, or dispense, any liquors containing alcohol, for any purpose whatsoever, otherwise than is provided in this Act. Any person, firm, association or corporation desiring or intending to manufacture or distill any liquors containing alcohol within this State shall first obtain from the State Board of Control a permit or license so to do: and it shall be unlawful for any such person, firm, association or corporation to manufacture or distill any liquors containing alcohol within this State without having such permit or license. Any violations of the terms of the permit or license shall authorize and warrant the seizure of the product on hand at any distillery or place where liquors containing alcohol are manufactured: Provided, The United States has no lien or claim upon the same. And in the application for a permit or license to manufacture liquors containing alcohol the applicant shall give the State full power upon any violation of this Act to seize and take possession of any product on hand at the distillery or place where such applicant shall manufacture such liquors, and shall authorize the State to pay the United States Government the tax upon the same if unpaid and to dispose thereof as provided herein for contraband goods. Every package, barrel or bottle of such liquors shipped beyond the limits of this State shall have thereon the certificate of the State Board of Control allowing same, otherwise it shall be liable to confiscation, and the railroad carrying it shall be punished as in Section three: And provided, That any person shall have the right to make wine for his or her own use from grapes or other Dispensers alone may sell.

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fruits. The Inspector appointed by the State Board of Control, as herein provided, shall have the right to enter and examine, at any and all times not forbidden by the United States laws, any distillery, brewery or place where liquors containing alcohol is manufactured within this State. Any manufacturer, distiller or brewer who may refuse to allow the inspector or Constable to enter and examine his place of business and its appurtenances at such times as the Inspector or Constable may deem proper shall forfeit his permit or license.

Account book of Dispenser.

Section 16. Every Dispenser shall keep a strict account of all liquors received by him from the State Commissioner, in a book kept for that purpose, which shall be subject at all times to the inspection of the Circuit Solicitor, any peace officer or grand juror of the County, or of any other citizen, and such book shall show the amount and kind of liquors procured, the date of receipt and amount sold, and the amount on hand of each kind for each month. Such book shall be produced by the party keeping the same, to be used as evidence on trial of any prosecution against him on notice duly served that the same will be required as evidence.

U. S. Special tax, *prima facie* evidence of illegal sales.

Section 17. The payment of the United States special tax as a liquor seller, or notice of any kind in any place of resort, or in any store or shop, indicating that alcoholic liquors are there sold, kept or given away, shall be held to be prima facie evidence that the person or persons paying said tax and the parties displaying such notices are acting in violation of this Act, and unless said person or parties are selling under appointment as prescribed by this Act they shall be punished by a fine of not less than one hundred dollars nor more than five hundred dollars, or by imprisonment for a term of not less than three months nor more than twelve months. Conviction in the United States Courts of illicit sales of liquors shall be taken as prima facie evidence of violation of the provision of this Act, and any distiller or manufacturer of liquors containing alcohol so convicted in the United States Courts shall, by reason of such conviction forfeit the permit or license granted him by the State Board of control in addition to the other penalties herein provided.

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Privileges to licensed druggists.

Section 18. Licensed druggists conducting drug stores d manufacturers of proprietary medicines are hereby au- orized to purchase of Dispensers of the Counties of their sidence intoxicating liquors (not including malt) for the rpose of compounding medicines, tinctures and extracts at cannot be used as a beverage. The Dispenser shall not arge licensed druggists more than ten per cent. net profits liquors so sold. Such purchaser shall keep a record of e uses to which the same are devoted, giving the kind and antity so used, and quarterly they shall make and file th the County Auditor and with the County Board of ntrol sworn reports, giving a full and true statement of quantity and kinds of such liquors purchased and used, e uses to which the same have been devoted, and giving name of the Dispenser from whom the same was pur- ased, and the dates and quantities so purchased, together h an invoice of each kind still in stock and kept for such mpoundings. If said licensed druggist shall sell, barter, e away or exchange, or in any manner dispose of, said uors for any purpose other than authorized by this Sec- n, he shall upon conviction forfeit his license and be lia- to all penalties, prosecutions and proceedings at law l in equity provided against persons selling without au- rity, and upon such conviction the Clerk of the Court ll, within ten days after such judgment or order, trans- to the Board of Pharmaceutical Examiners the certified ord thereof, upon receipt of which the said Board shall ke the name of the said druggist from the list of phar- cists and revoke his certificate: Provided, That nothing ein contained shall be construed to authorize the man- cture or sale of any preparation or compound under any ne, form or device, which may be used as a beverage ich is intoxicating in its character: And provided, fur- r, That the State Commissioner shall be authorized to to manufacturing chemists and wholesale druggists hol by the barrel at not exceeding ten per cent. above net cost.

False signatures, statements, &c; penalties.

ection 19. If any person shall make any false or ficti- s signature or sign any name other than his or her own ny paper required to be signed by this Act without be- authorized to do so, or make any false statement in any quest or application signed to procure liquor under

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this Act, the person so offending shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not more than twenty-five dollars or be imprisoned not more than thirty days.

False oath & illegal act of Dispensers

Section 20. If any Dispenser or his clerk shall make false oath touching any matter required to be sworn to under the provisions of this Act, the person so offending shall, upon conviction, be punished as provided by law for perjury. If any County Dispenser shall procure any intoxicating liquors from any other person than the State Commissioner, or make any false return to the County Auditor, or use any request for liquors for more than one sale, in any such case he shall be deemed guilty of a misdemeanor and upon conviction be punished by a fine of five hundred dollars or six months' imprisonment.

Liquors at clubs prohibited.

Section 21. Every person who shall, directly or indirectly, keep or maintain by himself, or by associating or combining with others, or who shall in any manner aid, assist or abet in keeping or maintaining, any club room or other place in which any intoxicating liquors are received or kept for use, barter or sale as a beverage, or for distribution or division among the members of any club or association by any means whatever, and every person who shall receive, barter, sell, assist, or abet another in receiving, bartering or selling, any alcoholic liquors so received or kept, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than one hundred dollars nor more than five hundred dollars, or by imprisonment for a term of not less than three months nor more than twelve months: Provided, That the State Board of Control shall have the power, upon a proper showing, and under such rules as they may adopt, to exempt hotels where tourists or health-seekers resort from being considered nuisances or as violating this Act by reason of any manager of such hotels dispensing liquors bought from the Dispensary by the bottle, either night or day, but before any such exemption shall be granted the State Board of Control shall require the manager of such hotel to give a good and sufficient bond in the penal sum of three thousand dollars conditioned for the observance of all the rules, regulations and restrictions prescribed and imposed by the said

Provisions as to hotels.

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Board and with all the requirements of this Act, and it shall be lawful for any Constable or officer thus employed under this Act to enter such hotel and search it for contraband liquors at any time, day or night, without a warrant.

Liquor resorts declared to be nuisances; arrest warrants seizures, &c.

Section 22. All places where alcoholic liquors are manufactured, sold, bartered or given away in violation of this Act, or where persons are permitted to resort for the purpose of drinking alcoholic liquors as a beverage, or where alcoholic liquors are kept for sale, barter or delivery in violation of this Act, are hereby declared to be common nuisances, and any person may go before any Magistrate in the County and swear out an arrest warrant on personal knowledge or on information and belief, charging said nuisance, giving the names of witnesses against the keeper or manager of such place and his aids and assistance, if any, and such Magistrate shall direct such arrest warrant either to the Sheriff of the County or to any special Constable, commanding said defendant to be arrested and brought before him to be dealt with according to law, and shall issue a search warrant in which the premises in question shall be particularly described, commanding such Sheriff or Constable to thoroughly search the premises in question and to seize all alcoholic liquors found thereon, and dispose of them as provided in Section 31, and to seize all vessels, bar fixtures, screens, bottles, glasses and appurtenances apparently used or suitable for use in retaining liquors, to make a complete inventory thereof, and deposit the same with the Sheriff. That under the arrest warrant the defendant shall be arrested and brought before such Magistrate, and the case shall be disposed of as in case of other crimes beyond his jurisdiction, except that when he commits or binds over the parties for trial to the next term of Court of General Sessions for the County he shall make out every paper in the case in duplicate and file one with the Clerk of the Court for the County, and immediately transmit the other to the Solicitor of the Circuit, whereupon said Solicitor shall at once apply to any circuit Judge at chambers within that Circuit, or to the nearest Circuit Judge if there be none in that Circuit, for an order restraining the defendants, their servants or agents, from keeping, receiving, bartering, selling or giving away any alcoholic liquors until the further order of the Court. Such Circuit Judge is hereby

Restraining order.

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A. D. 1896. authorized, empowered and required to grant the said restraining order without requiring a bond or undertaking upon the hearing or receipt by him of said papers from the Court of the said Magistrate by the hands of the Solicitor, and any violation of said restraining order before the trial of the case shall be deemed a contempt of Court and punished as such by said Judge or Court, or any other Circuit Judge, as for the violation of an order of injunction. Upon conviction of said defendants of maintaining said nuisance at the trial, they or any of them shall be deemed guilty of a misdemeanor, punishable by imprisonment in the County Jail for a term of not less than three months, or a fine of not less than two hundred dollars, or by both, in the discretion of the Court, and the restraining order shall be made perpetual. The articles covered by the inventory, which were retained by the Sheriff, shall be forfeited to the State and sold, and the net proceeds sent to the State Treasurer, and the Sheriff shall forthwith proceed to dispose of the alcoholic liquors covered by said inventory as provided for in this Act as when other liquors are seized. Liquors seized as hereinbefore provided, and the vessels containing them, shall not be taken from the custody of the officers in possession of the same by any writ of replevin or other process while the proceedings herein provided are pending. No suit shall lie for damages alleged to arise by seizure and detention of liquors under this Act. Any person violating the terms of any restraining order granted in such proceedings shall be punished for contempt by a fine of not less than two hundred dollars nor more than one thousand dollars, and by imprisonment not less than ninety days nor more than one year.

Violation of order to be contempt.

Punishment for contempt. In contempt proceedings arising out of the violation of any injunction granted under the provision of this Act, the Court, or in vacation any Judge thereof, shall have power to try summarily and punish the party or parties guilty, as required by law. The affidavits upon which the attachment for contempt issues shall make a prima facie case for the State. At the hearing upon the charge of contempt, evidence may be oral or in the form of affidavits, or both. The defendant shall not necessarily be discharged upon his denial of the fact stated in the moving papers. The Clerk of the Court shall, upon the application of either party, is-

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subpœnas for witnesses, and, except as above set forth, the practice in such contempt proceedings shall conform as nearly as may to the practice in the Court of Common Pleas. That when any Solicitor neglects or refuses to perform any duty, or to take any steps required of him by any of the provisions of the preceding Section, or by any of the provisions of this Act, the Attorney General, on his own motion, or by request of the Governor, shall in person, or by his Assistant, proceed to the locality and perform such neglected duty, and take such steps as are necessary in the place of such Solicitor, and at his discretion to cause a prosecution to be instituted, not only in the matter so neglected, but also a prosecution against the Solicitor for malfeasance or misfeasance in office, or for official misconduct or for other charges justified by facts, and to pursue the prosecution to the extent of a conviction and dismissal from office of any such Solicitor.

Duty of Attorney General, when Solicitor neglects his duty.

And in such event the Attorney General shall be, and is hereby, authorized and empowered to appoint one or more additional assistants, who shall each have while actually employed the same compensation, to be paid from the litigation fund of the Attorney-General.

Any duty herein imposed upon a Solicitor may be performed with equal force and effect by the Attorney-General or other person authorized by him to perform such duty.

Section 23. The manager of every registered distillery of liquor in this State shall report quarterly to the State Board of Control, showing the number of gallons of each kind of liquor on hand, manufactured or disposed of during the quarter; and if the said report fail to correspond with the return of said distiller to the United States Revenue Collector of this State, or it is shown that said manager has disposed of liquor contrary to this Act, said distillery shall be deemed to be a common nuisance, and the said manager and his aiders and assistants and the premises shall be proceeded against as in this Act provided as to places where liquors are sold contrary to this Act.

Distillers to report quarterly to State Board.

Section 24. In all places where liquors are unlawfully kept or stored, the same not being in an open house or exposed to view, and a search being necessary, upon affidavit to that effect, or on information and belief that contraband liquor is in such place, a search warrant may be issued by a

Search warrant, by whom issued; disposition of liquor seized.

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A. D. 1896. Justice, Judge or Magistrate, or Mayor or Intendant of a city or town, to whom application is made, empowering a Constable, or any person who may be deputized, to enter the said place by day time, or in the night time, and to search and examine the said premises for the purpose of seizing the said contraband liquors therein concealed, kept or stored, which said liquor when so seized shall be disposed of as hereinafter provided,

When seizures may be made without warrant. Section 25. That any of the liquors set forth in Section one (1) of this Act, which are contraband, may be seized and taken *without warrant* by any Constable, Sheriff or policeman while in transit or after arrival, whether in possession of a common carrier, depot agent, express agent, private person, firm, corporation or association, and reported to the State Commissioner at once, who shall dispose of the same as hereinafter provided: Provided, That liquors purchased outside the State, owned and conveyed as personal baggage, shall be exempt from seizure when the quantity does not exceed one gallon.

Possession of illicit liquor prohibited: debt for void. Section 26. That the possession of said illicit liquors is hereby prohibited and declared unlawful, and any obligation, note of indebtedness, contracted in their sale or transportation is declared to be absolutely null and void, nor shall any action or suit for the recovery of the same be entertained in any Court in this State.

Proceedings in rem. Section 27. That the proceedings against liquor so illegally kept, stored, sold, delivered, elsewhere than at his or her residence, transported or being transported, shall be considered a proceeding in rem, unless otherwise herein provided.

Transportation or possession of falsely branded packages. Section 28. That the carriage, transportation, possession, removal, sale, delivery or acceptance of any of the said liquors or liquids in any package, cask, jug, box or other package, under any other than the proper name or brand known to the trade as designating the kind and quality of the contents of the casks, packages or boxes containing the same, or the causing of such carriage, transportation, possession, removal, sale, delivery or acceptance, shall work the forfeiture of said liquors or liquids and casks or packages, and the person or persons so offending, knowingly, be subject to pay a fine of not less than one hundred dollars nor more than five hundred dollars, or imprisonment

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the term of not less than six months nor less than one year and the wrongful name, address, mark, stamp or style on such liquor when seized shall be considered evidence prima facie of guilt. The books and way bills of the common carrier may be examined to trace said liquor to the shipper, who shall be liable upon conviction, in like penalty. A. D. 1893

Section 29. That all Constables, Deputy Constables, Sheriffs, Magistrates or municipal policemen shall have the right, power and authority, and it shall be their duty, whenever they are informed or suspect that any such suspicious package in possession of a common carrier contains alcoholic liquors or liquids, to detain the same for examination for the term of twenty-four hours without any warrant or process whatever. Any Constable, Deputy Constable, Sheriff or Magistrate who shall neglect or refuse to perform the duties required by this Act shall be subject to suspension by the Governor. Any Sheriff or Magistrate seizing any alcoholic liquors or liquids as required by this Section shall be paid one-half the value of said liquors or liquids so soon as the same shall have been received at the State Dispensary, approved and disposed of according to law. Powers of Constables to detain suspicious packages

Section 30. That any interference by any person with, obstruction or resistance of, or abusive language to, any officer or person in the discharge of the duties herein enjoined, or the use of abusive language by any such officer or person to any other person or persons, shall be deemed a misdemeanor, and the person or person so offending shall, upon conviction, be punished by a fine of not less than one hundred dollars, nor more than five hundred dollars, or imprisoned for a term not less than three months nor more than twelve months. Interference with officers forbidden.

Section 31. In all cases of seizure of any goods, wares, merchandise, or any other property, hereafter or heretofore made as being subject to forfeiture under any provisions of this Act or any former Act, which in the opinion of the officer or person making the seizure are of the appraised value of fifty dollars or more, the said officer or person shall proceed as follows: First, He shall cause a list containing a particular description of the goods, wares or merchandise seized to be prepared in duplicate and an appraisement thereof to be made by three sworn appraisers to be selected by him, who shall be respectable and disinterested citizens Proceedings when goods seized are of the value of $50 or more.

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of the State of South Carolina residing within the County wherein the seizure was made. Said list and appraisement shall be properly attested by the said officer or person and the said appraisers, for which service each of the said appraisers shall be allowed the sum of one dollar per day, not exceeding five days, to be paid by the State Board of Control. Second. If the said goods are believed by the officer making the seizure to be of less value than fifty dollars, no appraisement shall be made. The said officer or person shall proceed to publish a notice for three weeks, in writing, at three places in the County where the seizure was made, describing the articles and stating the time and place and cause of their seizure, and requiring any person claiming them to appear and make such claim within thirty days from the date of the first publication of such notice. Third. That any person claiming the liquors or other property so seized as contraband within the time specified in the notice may file with the State Board of Control a claim, stating his interest in the articles seized, and may execute a bond to the State Board of Control in the penal sum of five hundred dollars, with sureties, to be approved by the said State Board of Control, conditioned that in the case of condemnation of the articles so seized the obligors shall pay all the costs and expenses of the proceedings to obtain such condemnation; and upon the delivery of such bonds to the State Board of Control he shall transmit the same with the duplicate list or description of the goods seized to the Solicitor of the Circuit in which such seizure was made, and the said Solicitor shall prosecute the case to secure the forfeiture of said contraband liquors or liquids in the Court having jurisdiction. Fourth. If no claim is interposed and no bond given within the time above specified, such liquors shall be forfeited without further proceedings, and the State Commissioner shall have the said liquors tested by the State Chemist, and *if pure* shall furnish the same *through the State Dispensary.* If not pure the same shall be destroyed by the Chemist of the South Carolina College, who shall make a report to the State Board of Control of the amount and kinds of liquors so destroyed: Provided, That in seizures in quantities less in value than fifty dollars of such illicit liquor, or liquors the same may be advertised with other quantities at Columbia by the State Board of

When of less value than $50

Duty of Solicitor.

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Control, and disposed of as hereinbefore provided; Provided, further, That the claimants of such liquors may give bond in one hundred dollars as when the value is fifty dollars or over, and shall bear the burden of showing before a Magistrate that they have complied with the law and that the liquor is not liable to seizure.

When claimants may give bond.

Section 32. That all fermented, distilled or other liquors, or liquids containing alcohol, transported into this State, or remaining herein for use, sale, consumption, storage or other disposition, shall, upon introduction and arrival in this State, be subject to the operation and effect of this law to the same extent and in the same manner as though such liquors or liquids had been produced in this State.

Liquors on arrival in the State to be subject to its laws.

Section 33. That no person except as provided in this Act, shall bring into this State, or transport from place to place within this State, by wagon, cart or other vehicle, or by any other means or mode of carriage, any liquors or liquids containing alcohol, under a penalty of one hundred dollars or imprisonment for thirty days for each offense, upon conviction thereof, as for a misdemeanor. Any servant, agent or employee of any persons, corporations or associations doing business in this State as a common carrier, or any person whatever (except an officer seizing or examining the same), who shall remove any intoxicating liquors from any railroad car, vessel, or other vehicle of transportation at any place other than the usual and established stations, wharves, depots or places of business of such common carriers within some incorporated city or town where there is a Dispensary, or who shall aid in or consent to such removal, or attempt to remove, shall upon conviction be sentenced to pay a fine of not less than one hundred dollars nor more than five hundred dollars, or imprisonment for a term of not less than three months nor more than twelve months: Provided, That said penalty shall not apply to any liquor in transit when changed from car to car to facilitate transportation across the State. Provided, That this Section does not apply to liquors purchased from a Dispensary and bearing the proper label or certificate. All liquors in this State, except Dispensary liquors and those passing through this State, consigned to points beyond this State shall be deemed contraband, and may be seized in transit

Penalty for transporting liquors in vehicles, except as herein provided.

Liquors in transitu.

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without warrant. And any steamboat, sailing vessel, railroad, express company or other common carrier transporting or bringing into this State, for sale or use therein, except by the Dispensary shall suffer a penalty of five hundred dollars and costs for each offense, to be recovered by the Solicitor of the Circuit or the Attorney General by an action brought therefor in any Court of competent jurisdiction. The State Constable, Sheriff, municipal police or any lawful Constable may enter any railroad car, or express car, or depot, or steamboat, or other vessel, without warrant, and make search for such contraband liquors, and may examine the way bills and freight books of said common carriers, and any one interfering with or resisting such officer shall be punished by a fine of not less than one hundred dollars nor more than five hundred dollars, or imprisonment for a term of not less than three months nor more than twelve months,

Officers may enter and search cars.

Section 34. That any person detected openly or in the act of violating any of the provisions of this Act shall be liable to arrest without warrant: Provided, A warrant shall be procured within a reasonable time thereafter.

Arrest of open violators.

Section 35. That in case of conviction of violations of any of the Sections of this Act where punishment is not especially provided for, the person or persons or corporations so convicted shall be punished in the discretion of the Court trying the same. All alcoholic liquors, other than domestic wine, which do not have on the packages in which they are contained the label and certificates going to show that they have been tested by the Chemist and purchased from a State officer authorized to sell them are hereby declared contraband, and on seizure will be forfeited to the State, as provided in Section 31: Provided, That this Section shall not apply to liquor held by the owners of registered stills in bonded warehouses. Persons having liquor which they wish to keep for their own use may throw the protection of the law around the same by furnishing an inventory of the quantity and kinds to the State Commissioner and applying for certificates to affix thereto.

Punishment for violation of forbidden acts.

Protection may be had for liquor stored.

Any persons affixing or causing to be affixed to any package containing alcoholic liquor any imitation stamp or other printed or engraved label or device than those furnished by

Imitation stamps prohibited.

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the State Board of Control shall, for each offence, be liable to a penalty of ten days' imprisonment or twenty-five dollars' fine.

Rescue from officer.

Section 36. Every person who dispossesses or rescues from a Constable or other officer, or attempts so to do, any alcoholic liquor taken or detained by such officer charged with the enforcement of this law shall, upon conviction, be imprisoned not less than three months nor more than twelve months, or pay a fine of not less than one hundred dollars nor more than five hundred dollars.

Handling contraband liquor at night.

Section 37. Any person handling contraband liquor in the night time or delivering the same shall be guilty of a misdemeanor, and on conviction shall be punished by imprisonment for not less than three months nor more than twelve months, or by a fine of not less than one hundred dollars nor more than five hundred dollars.

Transportation by vehicles night.

Section 38. Any wagon, cart, boat, or any other conveyance together with horses, mules or other animal or animals and harness, accompanying the same, transporting liquors at night, other than regular passenger or freight steamers and railway cars, shall be liable to seizure and confiscation, and to that end the officer shall cause the same to be duly advertised and sold and the proceeds sent to the State Treasurer.

Labels to be cancelled by Dispenser.

Section 39. Every Dispenser when he sells a package containing liquor shall put a cross mark in ink on the label or certificate thereon extending from the top to the bottom and from side to side. When any liquor is seized because it has not the necessary certificates and labels required by this Act, the burden of proof shall be upon the claimant of said spirits to show that no fraud has been committed and that the whiskey is not contraband.

Common carriers liable to treble value of goods lost or stolen.

Section 40. That any railroad, steamboat, express company or other common carrier shall incur a penalty of treble the invoice price of any alcoholic liquors lost or stolen in transit to or from the Dispensary, whether shipped as released or not, such penalty to be recovered by action in any Court of competent jurisdiction.

Agency for sale of liquor prohibited; repealed Act March '97.

Section 41. That in shall be unlawful for any person to take or to solicit orders, or to receive money from other persons for the purchase or shipment of any alcoholic liquors for or to such other persons in this State, except for

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liquors to be purchased and shipped from the Dispensar and any person violating this Section, upon conviction, sha be deemed guilty of a misdemeanor, and shall be punishe by imprisonment for a term of not less than three month nor more than twelve months, or by a fine of not less tha one hundred dollars nor more than five hundred dollars.

Officers to notify Solicitors, &c.

Section 42. It shall be the duty of Sheriffs, Deput Sheriffs and Constables having notice of the violation any of the provisions of this Act to notify the Circuit Solic tor of the fact of such violation, and to furnish him th name of any witness within their knowledge by whom suc violation can be proven. If any such officer or Solicito shall wilfully fail to comply with the provisions of thi Section, he shall, upon conviction, be fined in a sum not les than one hundred dollars nor more than five hundred dol lars, and such conviction shall work a forfeiture of th office held by such person, and the Court before whom such conviction is had shall, in addition to the imposition of th fine aforesaid, order and adjudge the forfeiture of his sai office.

Competent to charge divers sales on same or different days.

Section 43. That in any indictment for the sale of intoxi cating liquors it shall be competent to charge a series o sales on the same or on divers days up to the find ing of the true bill to one person, or to different persons naming one and stating the others to be unknown, in the same count, as was formerly the practice in indictments for retailing liquor without license in this State, and the prose cuting officer shall not be required to elect which particular sale he will rely on, but may offer proof of all, and proof of any one or all of the sales will sustain a verdict: Provided, Upon a trial and conviction or acquittal no other bill of indictment will lie for any sale occurring prior to bill found on the case tried, and that punishment shall be in such cases as for one sale: Provided, further, That this Section shall not be so construed as to prevent the prosecuting officer from giving out several bills of indictment for several sales in the first instance if he thinks best to do so.

Affidavits may be on information and belief.

Section 44. That whenever in this Act it is provided that process shall issue upon an affidavit based on information and belief, the affidavit shall contain a statement setting forth the sources of information, the facts and grounds of belief upon which the affiant bases his belief: Provided

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That it shall not be necessary to set forth the sources of information, the facts and grounds of belief in the affidavit upon which a warrant of arrest shall issue, but it shall only be necessary in cases of *search warrants*.

Actions against officers acting under this law.

Section 45. That Chapter I, Title VII, of the Code of Civil Procedure of this State, entitled "Of Provisional Remedies in Civil Actions," shall not apply to *any officer* or person *having duties* to perform *under this Act*, and in no case shall an action lie against any such officer or person for damages to person or property, as provided in said Chapter.

Governor may appoint State Constables; pay of.

Section 46. The Governor shall have authority to appoint one or more State Constables at a salary of not more than two dollars per day and such expenses as the Governor may deem proper when on duty, and two Chief Constables at not more than three dollaas each per day and such expenses as the Governor may deem proper, and also one or more detectives at reasonable compensation, to see that this Act is enforced, the same to be paid from the Dispensary fund in the same manner as the salary of the State Commissioner.

A Public Act

Section 47. That this Act shall be a public Act and shall go into effect immediately upon its approval by the Governor, and that all Acts or parts of Acts inconsistent with this Act be, and are hereby, repealed.

State Board of Control goes into office.

Section 48. The State Board of Control elected under this Act shall not take charge until first of April, 1896.

Approved the sixth day of March, A. D. 1896.

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No. 340. MARCH 5, 1897. A. D. 1897.

AN ACT to amend an Act entitled "An Act to provide for the election of a State Board of Control, and to further regulate the sale, use, consumption, transportation and disposition of intoxicating and alcoholic liquors or liquids in the State" and prescribed penalties for violation of the Dispensary Laws, and to police the same, approved March 6th, 1896, so as to regulate the importation of liquors for personal use. No 165.

SECTION 1. Be it enacted by the General Assembly of the State of South Carolina, That an Act entitled "An Act to provide for the election of the State Board of Control, and to further regulate the sale, use, consumption, transportation and disposition of intoxicating and alcoholic liquors or liquids in the State, and prescribe further penalties for violation of the Dispensary laws, and to police the same," approved March 6th, 1896, be amended as follows: In Section 1 strike out all of said Section after the word "offense" on line 22 of the printed Act and substitute therefor the following: All alcoholic liquors in this State, whether manufactured within this State or elsewhere, not having been tested by the chemist of the South Carolina College and found to be pure and free from poisonous, hurtful or deleterious matters, are hereby declared to be of a detrimental character, and their use and consumption are against the morals, good health and safety of the State and all such liquors may be seized wherever found, without a warrant, and disposed of as hereinafter provided. Any person resident in this State intending to import for personal use and consumption any spirituous, malt, vinous, fermented, brewed, or other liquor containing alcohol from any other State or foreign country shall first certify to the chemist of the South Carolina College the quantity and kind of liquor proposed to be imported, together with the name and place of business of the person, firm or corporation from whom it is desired to purchase, accompanying such certificate with a statement that the proposed consignor has been requested to forward a sample of such liquor to the said chemists at Columbia, South Carolina. Upon receipt of said sample the said chemist shall immediately proceed to test the same, and if found to be pure and free from all poisonous, hurtful or deleterious matter shall issue a certificate to that effect, stating therein the

Dispensary law amended. 1896 XXII.123.

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A. D. 1897. names of the proposed consignor and consignee and the quantity and kind of liquor proposed to be imported thereunder, which certificates shall be dated and forwarded by the said chemists post paid to the proposed consignor at his place of business. The said consignor shall cause such certificate to be attached to the package containing the liquor when it is shipped into this State, and no package bearing such certificate shall be liable to seizure and confiscation, but any package of spirituous, malt, vinous, fermented, brewed, or other liquor or liquid, containing alcohol imported into this State without such certificate, or any package containing liquor other than that described in the certificate thereto attached, or any package shipped by or to any person or persons not named in such certificate, shall be seized and confiscated as provided in this Act. Any certificate obtained from the chemist as herein provided shall be used within sixty days after the date of its issue, and shall be invalid thereafter. It shall be unlawful to use said certificate for more than one importation, and any person attempting to counterfeit said certificate or to make any improper use thereof, or who shall make any false statement in obtaining, or attempting to obtain, the same shall be deemed guilty of a misdemeanor, and upon conviction shall be punished by imprisonment for not less than thirty days nor more than twelve months or pay a fine of not less than one hundred nor more than one thousand dollars. Any person or persons convicted of selling or otherwise unlawfully disposing of any liquor imported under the provisions of this Section shall suffer double the punishment provided for a sale in violation of other provisions of this Act. All expenses incurred in enforcing the provisions of this Section, including compensation for such assistant chemists as may be necessary to make prompt analyses, and the express charges on samples, shall be paid by the State Board of Control hereinafter provided for as an expense of the State Dispensary established by this Act. If the chemist of the South Carolina College shall willfully fail or refuse to make or have made an analysis of any sample sent to him in accordance with the provisions of this Section, he shall upon conviction thereof before a Court of competent jurisdiction, be fined one hundred dollars for each offense." So that said Section when amended will read:

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"Section 1. Be it enacted by the General Assembly of the State of South Carolina, That the manufacture, sale, barter or exchange, receipt or acceptance for unlawful use, delivery, storing and keeping in possession within this State of any spirituous, malt, vinous, fermented, brewed (whether lager or rice beer), or other liquors, any compound or mixture thereof, by whatever name called or known, which contains alcohol and is used as a beverage, except as is hereafter provided, is hereby prohibited under a penalty of not less than three nor more than twelve months at hard labor in the State Penitentiary, or pay a fine of not less than $100 nor more than $500, or both fine and imprisonment, in the discretion of the Court, for each offense. All alcoholic liquors in this State, whether manufactured within this State or elsewhere, not having been tested by the chemist of the South Carolina College and found to be pure and free from poisonous, hurtful and deleterious matters, are hereby declared to be of a detrimental character, and their use and consumption are against the morals, good health and safety of the State, and all such liquors may be seized wherever found, without a warrant, and disposed of as hereinafter provided. Any person resident in this State intending to import for personal use and consumption any spirituous, malt, vinous, fermented, brewed or other liquor containing alcohol from any other State or foreign country shall first certify to the chemist of the South Carolina College the quantity and kind of liquor proposed to be imported, together with the name and place of business of the person, firm or corporation from whom it is desired to purchase, accompanying such certificate with a statement that the proposed consignor has been requested to forward a sample of such liquor to the said chemist at Columbia, South Carolina. Upon receipt of said sample the said chemist shall immediately proceed to test the same, and if found to be pure and free from any poisonous, hurtful or deleterious matters he shall issue a certificate to that effect, stating therein the names of the proposed consignor and consignee, and the quantity and kind of liquor proposed to be imported thereunder, which certificate shall be dated and forwarded by the said chemist post paid to the proposed consignor at his place of business. The said consignor shall cause such certificate to be attached to the package

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The manufacture, sale or keeping of spirituous liquors prohibited except as herein provided.

Penalty for violation.

Liquors to be tested by chemist.

How liquors may be imported in State.

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containing the liquor when it is shipped into the State, and no package bearing such certificate shall be liable to seizure and confiscation, but any package of spirituous, malt, vinous, fermented, brewed or other liquor or liquid containing alcohol imported into this State without such certificate, or any package containing liquor other than that described in the certificate thereto attached, or any package shipped by or to any person or persons not named in such certificate, shall be seized and confiscated as provided in this Act. Any certificate obtained from the chemist as herein provided shall be used within sixty days after the date of its issue and shall be invalid thereafter. It shall be unlawful to use said certificate for more than one importation, and any persons attempting to counterfeit said certificate or to make any improper use thereof, or who shall make any false statement in obtaining or attempting to obtain the same shall be deemed guilty of a misdemeanor and upon conviction shall be punished by imprisonment for not less than thirty days nor more than twelve months, or pay a fine of not less than one hundred nor more than one thousand dollars. Any person or persons convicted of selling or otherwise unlawfully disposing of any liquor imported under the provision of this Act shall suffer double the punishment provided for a sale in violation of other provisions of this Act. All expenses incurred in enforcing the provisions of this Section, including compensation for such assistant chemists as may be necessary to make prompt analysis and the express charges on samples, shall be paid by the State Board of Control hereinafter provided for as an expense of the State Dispensary established by this Act. If the chemist of the South Carolina College shall willfully fail or refuse to make or have made an analysis of any sample sent to him in accordance with the provisions of this Section he shall, upon conviction thereof before a Court of competent jurisdiction, be fined one hundred dollars for each offense."

Penalty for unlawful use of certificate.

Penalty for selling or disposing of liquor.

Amend Section 2 by striking out the word "use" on the 19th line of printed Act and substitute the word "sale" therefor after the word "lawful." So that the Section as amended will read:

Sec. 2 amended

"Section 2. A Board consisting of five members, to be known as the State Board of Control, shall be elected

State Board of Control.

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the General Assembly at this session to carry out the provisions of this Act, the said Board to be composed of men not addicted to the use of intoxicating liquors. The terms of office of the Board so elected shall be for one, two, three, four and five years, respectively, and those elected shall determine by lot which shall take the respective terms. At the expiration of the term of office of each member, his successor shall be elected for a term of five years. They shall receive for their services the same per diem and mileage as members of the General Assembly. The State Board of Control shall devise and inaugurate such a system of bookkeeping and accounting as they may deem advisable, and shall elect a clerk or bookkeeper who shall hold his office during the pleasure of the Board and shall receive as compensation for his services a salary of $1,500 per annum. The State Board of Control, under such rules and regulations as may be adopted by said Board, shall purchase all liquors for lawful sale in this State, and shall have the same tested and declared to be pure as hereinbefore and hereinafter provided."

Sec. 3 amended.

Amend Section 3 by stricking out the word "use" on the 9th line of the printed Act and substitute the word "sale" therefor after the word "lawful." also amend by adding on the 27th line of the printed Act. after the word "pure," the words "and free from poisonous, hurtful and deleterious matter," also, amend by adding the words "sale and" on the 59th line, after the word "for." So that the Section as amended will read:

Election of Commissioner Term of office, duties of, etc.

"Section 3. That the State Board of Control shall at the expiration of the term of the present Commissioner and at the expiration of every two years thereafter appoint a Commissioner, which appointment shall be submitted to the Senate at its next session for its approval; said Commissioner shall be believed by the State Board of Control to be an abstainer from intoxicants, and shall, under such rules and regulations as may be made by the State Board of Control, furnish all intoxicating liquors for lawful sale in this State to such persons as may be designated as dispensers thereof, to be sold as hereafter prescribed in this Act. Said Commissioner shall reside and have his place of business in the City of Columbia in this State, and hold his office two years from his appointment and until another be

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A. D. 1897. appointed in his stead. He shall be subject to removal for cause by the State Board of Control. He shall qualify and be commissioned the same as other State officers and shall receive an annual salary of $2,500, payable from the Dispensary fund upon the warrant of the State Board of Control. He shall be allowed a bookkeeper, who shall be paid in the same manner a salary of $1,200, and such other assistants as, in the opinion of the Board of Control, may be deemed necessary. He shall not furnish to the County Dispensers any intoxicating or fermented liquors except such as have been tested by the chemist of the South Carolina College and declared to be pure and free from poisonous, hurtful and deleterious matters: *Provided*,, That said Board of Control shall have authority to appoint such assistants as they may find necessary to assist the chemist of the South Carolina College in making the analyses required by this Act; and the said Board of Control may fix such reasonable compensation, if any, as they may deem proper for the services rendered by such chemist or such assistants Each County Dispenser shall remit to the State Treasurer all moneys accruing to the State from the sale of liquors under such rules as may be prescribed by the State Board of Control, and the State Treasurer shall keep a separate account with said fund, from which the State Board of Control shall draw from time to time upon warrants. or in such manner as they may provide, the amount necessary to pay the expenses incurred in conducting the business. All rules and regulations governing the said Commissioner or County Dispenser in the performance of any of the duties of his office, where the same are not provided for by law, shall be prescribed by the State Board of Control. The State Commissioner shall, before entering upon the duties of his office execute a bond to the State Treasurer, with sufficient sureties, to be approved in the same manner as the bonds of other State officers, in the penal sum of $10,000, for the faithful performance of the duties of his office: *Provided*, That any officer of the State Dispensary or of the County Dispensary shall have the right to give either a personal bond or a bond in a guaraatee company, any rule or regulation to the contrary notwithstanding: *Provided*, The bond shall be approved as other official bonds are approved. In all purchases or sales of intoxicating liquors made as con-

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templated in this Act the State Board of Control shall cause a certificate to be attached to each and every package containing said liquors when the same is shipped to the State Commissioner from the place of purchase, or by State Commissioner to the County Dispensaries, certified by their official signatures and seal, which certificate shall state that liquors contained in said packages have been purchased by the State Board of Control for sale and use within the State of South Carolina, under the laws of said State, and shall also cause to be attached to all such liquors the certificate of the chemist of the South Carolina College that samples of the same have been tested as required by this Act; and without such certificates any package containing liquors which shall be shipped from place to place within this State, or delivered to the consignee by any railroad, express company or other common carriers, or be found in the possession of any common carrier, shall be regarded as contraband and may be seized without warrant for confiscation, and such common carrier shall be liable to a penalty of $500 for each offense, to be recovered against said common carrier in any Court of competent jurisdiction by summons and complaint, proceedings to be instituted by the Solicitor of any Circuit, with whom evidence may be lodged by any officer or citizen having knowledge or information of the violation; and any person attaching or using such certificate without the authority of the State Board of Control, or any counterfeit certificate for the purpose of securing the transportation of any intoxicating liquors within this State in violation of law, shall, upon conviction thereof, be punished by a fine of not less that $500 and imprisonment in the Penitentiary for not less than one year for each offense." A. D. 1897.

Amend by striking out Section 41 of the Act, and change the number of subsequent Sections in the Act, so that Section 42 will become Section 41 and the other Sections be numbered accordingly. Sec. 41 stricken out.

Approved the 5th day of March, A. D. 1897.

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